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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
EUGENE DIVISION**

Elizabeth HUNTER: et al.,	Plaintiffs,	)	Case No. 6:21-cv-00474-AA
v.	)	)	
U.S. DEPARTMENT OF EDUCATION; et al.	Defendants.	)	<b>PLAINTIFFS' DEPOSITION DESIGNATIONS</b>
v.	)	)	
COUNCIL FOR CHRISTIAN COLLEGES &	)	)	
UNIVERSITIES, WESTERN BAPTIST	)	)	
COLLEGE d/b/a/ CORBAN UNIVERSITY,	)	)	
WILLIAM JESSUP UNIVERSITY AND	)	)	
PHOENIX SEMINARY,	)	)	
	)	)	
Defendants-Intervenors.	)	)	

Plaintiffs designate the following sections of the 30(B)(6) Deposition of Randolph Wills for purposes of the preliminary injunction hearing:

1. 22:22-28:20

2. 30:11-33:5

3. 36:17-37:3

4. 39:10-40:3

5. 40:14-41:4

6. 42:4-17

7. 49:2-54:8

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11. 82:14-86:4

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14. 99:14-101:20

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29. 188:20-190:1

30. 196:12-198:3

31. 208:12-22

32. 223:13-224:17

33. 233:11-240:3



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2 On behalf of Plaintiffs:	2 E X A M I N A T I O N B Y : P A G E
3 PAUL CARLOS SOUTHWICK, ESQUIRE	3 Counsel for Plaintiffs 8
JOE BAXTER, ESQUIRE	4 Counsel for Defendant-Intervenor Council 242
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8 On behalf of Defendants	of U.S. Department of Education
9 HILARIE E. SNYDER, ESQUIRE	10 Exhibit 2 Topic 1 Chart of Title IX 47
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U.S. Department of Justice	Office for Civil Rights
11 Civil Division, Federal Programs Branch	13 Case Processing Manual
P.O. Box 883	14 Exhibit 4 U.S. Department of Education 68
12 Washington, D.C. 20044	Office for Civil Rights
hilarie.e.snyder@usdoj.gov	15 Discrimination Complaint Form
13 carol.federighi@usdoj.gov	ED3.000001 - 021
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17 RYAN J. TUCKER, ESQUIRE	Correspondence
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4 JOSHUA J. PRINCE, ESQUIRE	5 Executive Order 14021, Notice
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5 1717 K Street, Northwest	6
Suite 900	7 Exhibit 9 U.S. Department of Justice 184
6 Washington, D.C. 20006	7 Office for Civil Rights
gschaerr@schaerr-jaffe.com	8 Questions and Answers on the
7 jprince@schaerr-jaffe.com	8 Title IX Regulations on Sexual
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9 HERBERT G. GREY, ESQUIRE	9 Exhibit 10 Baylor University Statement on 216
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11 Beaverton, Oregon 97005	12
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13 ALSO PRESENT:	14
14 Kathryn Ellis, Esq., Department of Education	15
15 Lori Talbott, Video Technician	16
16	17
17	18
18	19
19	20
20	21
21	22 (*Exhibits attached to transcript.)
22 (All parties appearing remotely.)	Page 3
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<p>1           P R O C E E D I N G S</p> <p>2           VIDEO TECHNICIAN: Good morning. We're</p> <p>3   going on the record at 10:09 a.m. Eastern time on</p> <p>4   October 21st, 2021. This deposition is being</p> <p>5   conducted using virtual technology, and all</p> <p>6   participants are attending remotely. Audio and</p> <p>7   video recording will continue to take place</p> <p>8   unless all parties agree to go off the record.</p> <p>9           This is Media Unit 1 in the</p> <p>10   video-recorded deposition of U.S. Department of</p> <p>11   Education 30(b)(6) Designee Randolph -- Randolph</p> <p>12   Wills, taken by counsel for plaintiff in the</p> <p>13   matter of Elizabeth Hunter, et al. versus U.S.</p> <p>14   Department of Education, et al., filed in the</p> <p>15   United States District Court, District of Oregon,</p> <p>16   Eugene Division, Case No. 6:21-cv-00474-AA.</p> <p>17           My name is Lori Talbott from the firm</p> <p>18   Veritext. I am the videographer. The court</p> <p>19   reporter is Erick Thacker from the firm Veritext.</p> <p>20   I am not related to any party in this action, nor</p> <p>21   am I financially interested in the outcome.</p> <p>22           If there are any objections to</p>	<p>1           VIDEO TECHNICIAN: -- swear in the</p> <p>2   witness. I'm sorry, Ryan. Go ahead.</p> <p>3           MR. TUCKER: Yes. I spoke earlier. I</p> <p>4   think it was on mute. This is Ryan Tucker,</p> <p>5   counsel for the intervenors, Corban University,</p> <p>6   William Jessup and Phoenix Seminary.</p> <p>7           Mark Lippelmann is not present now, but</p> <p>8   will join us later in the deposition.</p> <p>9           VIDEO TECHNICIAN: Thank you. Would</p> <p>10   the court reporter please swear in the witness?</p> <p>11   WHEREUPON,</p> <p>12           RANDOLPH WILLS</p> <p>13   called as a witness, and having been first duly</p> <p>14   sworn, was examined and testified as follows:</p> <p>15           EXAMINATION BY COUNSEL FOR PLAINTIFFS</p> <p>16   BY MR. SOUTHWICK</p> <p>17   Q   All right. Good morning, Mr. Wills.</p> <p>18   My name is Paul Southwick, the attorney</p> <p>19   representing the plaintiff, and I'll be taking</p> <p>20   your deposition today.</p> <p>21           MR. SOUTHWICK: Before we begin,</p> <p>22   actually, is there a way to pin the witness on</p>
<p>Page 6</p> <p>1   proceeding, please state them at the time of your</p> <p>2   appearance, and we'll begin with the noticing</p> <p>3   attorney, please.</p> <p>4           MR. SOUTHWICK: Paul Southwick for</p> <p>5   plaintiffs.</p> <p>6           MR. BAXTER: Joe Baxter for plaintiffs.</p> <p>7           MS. SNYDER: Hilarie Snyder, Carol</p> <p>8   Federighi, Elliott Davis for defendants, and with</p> <p>9   us is agency counsel Kathryn Ellis.</p> <p>10           MR. SCHAERR: And on behalf of the --</p> <p>11   of CCCU as intervenor, Gene Schaerr, and Herb</p> <p>12   Grey is with me.</p> <p>13           VIDEO TECHNICIAN: And I also -- I also</p> <p>14   believe we have Mr. Prince and Mr. Tucker with</p> <p>15   us.</p> <p>16           MR. PRINCE: Yes. Joshua Prince, also</p> <p>17   for CCCU, intervenor.</p> <p>18           VIDEO TECHNICIAN: And if the court</p> <p>19   reporter would --</p> <p>20           MR. TUCKER: This is --</p> <p>21           VIDEO TECHNICIAN: -- please --</p> <p>22           MR. TUCKER: This is Ryan --</p>	<p>Page 8</p> <p>1   the big screen, Camille, or --</p> <p>2           MR. BAXTER: See the three dots right</p> <p>3   here?</p> <p>4           VIDEO TECHNICIAN: Yes. Put your</p> <p>5   cursor over Mr. Wills --</p> <p>6           MR. SOUTHWICK: Okay. Got it. All</p> <p>7   right. Thank you.</p> <p>8   BY MR. SOUTHWICK</p> <p>9   Q   All right, Mr. Wills. And you</p> <p>10   understand that you have agreed to provide</p> <p>11   testimony today under oath and on behalf of the</p> <p>12   Department of Education?</p> <p>13   A   I understand that.</p> <p>14   Q   Great. I'm going to go over of the</p> <p>15   ground rules. First, have you had your</p> <p>16   deposition taken before?</p> <p>17   A   I have.</p> <p>18   Q   Approximately how many times?</p> <p>19   A   I've had my deposition taken, I</p> <p>20   believe, just one time.</p> <p>21   Q   All right. Do you remember how long</p> <p>22   ago that was?</p>

1 A That was in the late 1970s. I believe  
2 1977.  
3 Q So it's been a few years. All right.  
4 Well, I'll go ahead and go over the ground rules  
5 since it's been a while since you've had a  
6 deposition.  
7 I take it that you have had an  
8 opportunity to meet with your counsel in advance  
9 of the deposition; is that correct?  
10 A That is correct.  
11 Q All right. So they might have gone  
12 over some of this with you, but I'll just go over  
13 it today to get us started.  
14 So in this deposition, I will be asking  
15 you questions. You will be providing answers.  
16 And for the sake of the court reporter, it's best  
17 if you can provide verbal responses rather than  
18 any just nodding of head and that sort of a  
19 thing. You understand and are prepared to do  
20 that?  
21 A I am.  
22 Q And you understand that in addition to

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1 If -- if you know the answer, though,  
2 you are required to provide that answer unless  
3 instructed by counsel. Do you understand that?  
4 A I understand that.  
5 Q All right. One thing that may happen  
6 today is there may be objections to some of my  
7 questions throughout the day, and sometimes that  
8 can cause an interruption in the flow.  
9 If an objection makes it so that you  
10 can't remember the question I ask, I'd be happy  
11 to repeat it, or we can have the court reporter  
12 read it back. But I'd just ask that -- let your  
13 lawyer state their full objection and then go  
14 ahead and make your response.  
15 Also, there are lawyers for other  
16 parties that may also be making objections on the  
17 record, so I just ask that you let them state  
18 their objection, wait till they're done, and then  
19 provide your answer.  
20 Is that all right?  
21 A Correct. I understand.  
22 Q Great. We'll also take some breaks

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1 the court reporter, this is also being videoed  
2 and that we have a videographer, and there will  
3 be a video version of your testimony.  
4 Are you aware of that?  
5 A I am aware of that.  
6 Q Is there anything that might prevent  
7 you from providing full and accurate testimony  
8 today, any illnesses or anything like that?  
9 A There is nothing of that sort.  
10 Q Great. What I'd ask is -- I'm going to  
11 try to be clear with my questions to you, but in  
12 the event that you need me to clarify, would you  
13 agree to ask me to clarify my questions today if  
14 anything is confusing?  
15 A I will do so.  
16 Q Great. Thank you. One other thing is  
17 that during the course of our discussion, I may  
18 ask you questions that you don't know the answer  
19 to. I'd ask that you, you know, don't offer any  
20 guesses or anything like that. I'm looking for  
21 information that you -- you know or you  
22 reasonably can know.

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1 throughout the day, and if you ever need a break,  
2 just let me know. I tend to have breaks every  
3 hour or so, and then we'll -- we'll take a lunch  
4 break. But if you need a break for any reason,  
5 just let us know. I'm happy to do that. I'd  
6 just ask if there's a pending question that you  
7 do provide an answer to that pending question  
8 prior to taking the break.  
9 Sound good?  
10 A Sounds good.  
11 Q All right. Great. Well, you stated  
12 your name, so Randolph Wills.  
13 Is Mr. Wills okay for addressing you?  
14 A That's fine.  
15 Q Great. All right, Mr. Wills. Can you  
16 tell us what your current -- who your current  
17 employer is and what your title is there.  
18 A My current employer is the U.S.  
19 Department of Education. My current title is  
20 deputy assistant secretary for enforcement for  
21 the Office for Civil Rights.  
22 Q All right. And how long have you been

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<p>1 in the Department of Education?</p> <p>2 A I've been in the Department of</p> <p>3 Education for a little over 18 years.</p> <p>4 Q And how long in the Office of Civil</p> <p>5 Rights?</p> <p>6 A I've been in the Office for Civil</p> <p>7 Rights for that entire time.</p> <p>8 Q All right. And can you describe the</p> <p>9 nature of your role?</p> <p>10 A Yes. I am responsible for overseeing</p> <p>11 the enforcement compliance work of OCR's 12</p> <p>12 regional offices. I do that with the assistance</p> <p>13 of four enforcement directors, who oversee more</p> <p>14 directly those regional offices and their</p> <p>15 compliance work, that compliance work consisting</p> <p>16 of the evaluation, resolution and -- evaluation,</p> <p>17 investigation and resolution of complaints, also</p> <p>18 the investigation of the compliance reviews and</p> <p>19 directed investigations, and a third component of</p> <p>20 our enforcement work involves the provision of</p> <p>21 technical assistance.</p> <p>22 Q And how long have you been in the</p>	<p>1 A As an enforcement director? I'm sorry.</p> <p>2 I didn't understand the reference there.</p> <p>3 Q Yeah. In your current position as --</p> <p>4 as an -- in your current position, what kind of</p> <p>5 day-to-day activities do you have or obligations</p> <p>6 do you have?</p> <p>7 A In my day-to-day activities, I have a</p> <p>8 number of roles. Some of them are case related</p> <p>9 in terms of reviewing particularly sensitive</p> <p>10 cases that our regional offices are addressing.</p> <p>11 I do that with a group of headquarters personnel,</p> <p>12 including the acting assistant secretary.</p> <p>13 I also have numerous administrative</p> <p>14 duties. I'm responsible for ensuring that the</p> <p>15 management of the regional offices is -- is</p> <p>16 running appropriately. I'm the hiring official</p> <p>17 for the enforcement side of OCR. So when we are</p> <p>18 hiring, which we're currently doing, I'm -- I am</p> <p>19 a selecting official, and I'm responsible for</p> <p>20 ensuring that that process moves forward.</p> <p>21 I'm responsible, also, for providing</p> <p>22 considerable input into the budget for our 12</p>
<p>Page 14</p> <p>1 role -- your current role?</p> <p>2 A I've been in this role since</p> <p>3 September 2018.</p> <p>4 Q And what did you do before that?</p> <p>5 A Before that, I served OCR as an</p> <p>6 enforcement director.</p> <p>7 Q Was that in a regional office?</p> <p>8 A I was -- no. I was working out of our</p> <p>9 headquarters office.</p> <p>10 Q And how long were you a director in</p> <p>11 that capacity?</p> <p>12 A I was an enforcement director from</p> <p>13 summer of 2008 until September of 2018.</p> <p>14 Q And you worked out of headquarters that</p> <p>15 whole time?</p> <p>16 A I didn't start working out of</p> <p>17 headquarters until 2010.</p> <p>18 Q Can you tell me a little bit about -- a</p> <p>19 little bit more specifically about your role,</p> <p>20 what kinds of activities do you do, what kind of</p> <p>21 obligations do you have over your regional</p> <p>22 directors and other directors?</p>	<p>Page 16</p> <p>1 regional offices. I also handle -- under certain</p> <p>2 circumstances, as the deciding official, I handle</p> <p>3 grievance issues and EEO complaints.</p> <p>4 I am in very close contact with the</p> <p>5 assistant secretary. I -- part of my</p> <p>6 responsibilities are to provide advice to her on</p> <p>7 enforcement issues, on our proactive activities</p> <p>8 in particular with regard to enforcement issues.</p> <p>9 And I very often, along with some of my</p> <p>10 colleagues, will weigh in on proposed policy</p> <p>11 matters, although policy is -- our policy is</p> <p>12 actually generated out of a different part of</p> <p>13 OCR.</p> <p>14 Q You mentioned proactive enforcement</p> <p>15 activities. Could you describe what you mean by</p> <p>16 that?</p> <p>17 A Our proactive enforcement activities</p> <p>18 are -- there are really two types of proactive</p> <p>19 enforcement activities. The first type, which</p> <p>20 we've done previously for many years, are</p> <p>21 compliance reviews. OCR's compliance reviews</p> <p>22 are -- we generally -- we don't do this every</p>

1 year, but generally, certainly in the past, we  
2 have opened compliance reviews every year.  
3 The compliance reviews, we -- the  
4 issues that we are investigating -- compliance  
5 reviews, again, are proactive on the part of OCR.  
6 They don't involve individual complainants.  
7 They're not generated by individual complainants.  
8 They are opened in areas of particular concern to  
9 the secretary, to the assistant secretary.  
10 And as a result, those reviews are --  
11 when they are opened, we notify not only the  
12 recipients -- and they may be elementary and  
13 secondary recipients. They may be postsecondary  
14 recipients. We notify the recipients. We also  
15 notify the representatives and senators in the  
16 districts and states where we're opening those  
17 reviews. These are very public announcements by  
18 OCR of areas of particular concern.

19 The other form of proactive compliance  
20 activity that we engage in are known as directed  
21 investigations, and both compliance reviews and  
22 direct investigations, actually, are described in

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1 So for the compliance reviews, it's my  
2 understanding that OCR has recently opened a  
3 number of these with respect to some state  
4 education systems regarding COVID issues; is that  
5 correct?

6 A Those are directed investigations.

7 Those are not compliance reviews.

8 Q Other than those directed  
9 investigations, are you aware of any other  
10 directed investigations OCR has opened in the  
11 last year?

12 MS. SNYDER: Objection. You're outside  
13 the scope. If you know, you can answer in your  
14 personal capacity.

15 THE WITNESS: No. Those are the only  
16 directed investigations that OCR has opened in  
17 the past year.

18 BY MR. SOUTHWICK

19 Q Are you aware of any compliance reviews  
20 that OCR has opened in the past year?

21 MS. SNYDER: Objection. Again, you're  
22 outside the scope of the deposition topics. If

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1 the Case Processing Manual, a copy of which I  
2 know you have. Our directed investigations are  
3 more ad hoc in nature. They depend -- if -- if  
4 OCR has received information that raises concerns  
5 about possible violations of law in certain  
6 areas, we have the option of opening a directed  
7 investigation.

8 These are not preplanned in the way  
9 that compliance reviews are. We have a number of  
10 open directed investigations at any given time,  
11 but they are really directed at issues that we've  
12 seen. Whether they come to us through community  
13 groups or through media or other sources of  
14 information that give rise to concerns that we  
15 might have, we can open a directed investigation.

16 So those are our two forms of proactive  
17 compliance activities, proactive because they're  
18 generated by OCR, by the Department, not by an  
19 individual complainant or a group of  
20 complainants.

21 Q And so for -- thank you for that  
22 explanation.

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1 you know, you can answer in your --

2 THE WITNESS: We have --

3 MS. SNYDER: -- personal capacity.

4 THE WITNESS: -- not opened -- we have  
5 not opened any compliance reviews in the past  
6 year.

7 BY MR. SOUTHWICK

8 Q During your tenure with the Office of  
9 Civil Rights, are you aware of any directed  
10 investigations that have been opened with respect  
11 to LGBT students?

12 MS. SNYDER: Objection. Again, you're  
13 outside the scope of the deposition topics, but  
14 if you know, you can answer in your personal  
15 capacity.

16 THE WITNESS: To my knowledge, we have  
17 not opened any directed investigations  
18 specifically targeted to LGBTQ students.

19 BY MR. SOUTHWICK

20 Q And would the same be true of  
21 compliance reviews?

22 MS. SNYDER: Again, objection. You're

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6 (Pages 18 - 21)

<p>1 outside the scope of the deposition topics. 2 If you know, you may answer in your 3 personal capacity. 4 THE WITNESS: The same is true for 5 compliance reviews. 6 BY MR. SOUTHWICK 7 Q And as your counsel has been making 8 objections and referencing personal capacity, we 9 should go over that as well. 10 Do you understand that, in general, you 11 are here in the capacity as a representative of 12 the Department of Education to provide answers in 13 response to my questions on behalf of the 14 Department? 15 A I understand that. 16 Q And -- and -- and so unless otherwise 17 stated, I am going to -- is it fair to assume 18 that unless otherwise stated that you will be 19 providing responses to my questions within that 20 representative capacity? 21 A Yes. That is true. 22 Q Earlier, when you were describing your</p>	<p>1 substantive areas, whether its Title VI, 504, 2 Title IX, that are of particular interest with 3 regard to the application -- the appropriate 4 application of -- of law and policy. And so 5 those cases -- certainly, any determinations, any 6 final determinations that we make, that OCR makes 7 in those cases, we review at the headquarters 8 level. I am not the sole reviewer, however. 9 Q Can you explain some of the categories 10 of those cases of interest currently? 11 MS. SNYDER: Objection. Again, 12 Counsel, you're outside the scope of the topics 13 in the deposition notice. 14 If you know the answer, you can answer 15 in your personal capacity. 16 THE WITNESS: I'll answer in my 17 personal capacity. Some of the areas currently 18 that we have -- we've deemed to be cases of 19 interest, areas of interest, are, for example, 20 Title IX sexual harassment, sexual violence, 21 Title VI, racial harassment, disability 22 harassment, COVID-9 [sic] related issues, issues</p>
<p>Page 22</p> <p>1 responsibilities in your current role, you 2 mentioned that you are responsible for sensitive 3 OCR complaints or sensitive investigations. 4 Can you describe the general kind of 5 nature of what might make something sensitive 6 like that? 7 A Yes. Every administration that I have 8 worked under has maintained a list of what we 9 will call now sensitive cases. They haven't 10 always all denominated them that way in each 11 administration. 12 But they're a list of cases, of types 13 of cases, of substantive areas and issue areas 14 that an administration is interested in for a 15 variety of reasons and as a result will want to 16 make sure that whatever work is done in those 17 areas aligns with the administration's policy. 18 So we currently have an area of what 19 we'll call sensitive cases. We don't currently 20 call them that in this administration, but I'm 21 using that term very broadly. We call them cases 22 of interest. And they are in areas, in</p>	<p>1 related to Title VI discipline, Title VI shared 2 ancestry cases. 3 And for a complete list, I would have 4 to consult our -- our list and get back to you, 5 but those are some of the areas that we are -- 6 currently have on our cases of interest list. 7 BY MR. SOUTHWICK 8 Q During your tenure, have cases 9 involving LGBTQ students been part of this 10 category of cases of interest? 11 MS. SNYDER: Again, objection. You're 12 outside the scope of the deposition topics. 13 If you know, you can answer in your -- 14 THE WITNESS: Yes. 15 MS. SNYDER: -- personal capacity. 16 THE WITNESS: Yes. And we are also 17 looking at -- at sexual orientation gender 18 identity cases currently on the cases of interest 19 list. 20 BY MR. SOUTHWICK 21 Q What about issues of religious 22 exemption claims under Title IX? Has that been</p>

<p>1 a -- within the realm of cases of interest or 2 sensitive cases during your tenure? 3 MS. SNYDER: Again -- well, withdrawn. 4 THE WITNESS: Cases where religious 5 exemptions are at issue have not been during my 6 tenure on the cases of interest or sensitive 7 cases list. And let me finish. Until -- until 8 very recently. But during my tenure, until very 9 recently, they have not been cases that 10 headquarters had to have eyes on before 11 determinations could issue. 12 BY MR. SOUTHWICK 13 Q And when you say very recently, how -- 14 how -- how recent are we talking? In the last 15 couple of months or weeks? 16 A We're talking in the last couple of 17 months. 18 Q And why have cases involving Title IX 19 religious exemptions become part of the cases of 20 interest recently? 21 A Let me address -- 22 MS. SNYDER: Objection. Potential</p>	<p>1 this particular area, we did what we have done in 2 the past when we've begun to receive multiple 3 cases addressing very similar or the same issues. 4 We have a great concern to ensure that our 5 response to those cases is consistent across our 6 regional offices, and as you know, we have 12 of 7 them. We -- a number of those offices, not all 8 12, had received these cases involving religious 9 exemptions. 10 So we determined that it was prudent 11 to, first of all, know about when those cases 12 were coming in, and they continued to come in. 13 This was the notification we received in 14 headquarters about the cases during the initial 15 filings of religious exemption-related cases 16 under Title IX. But as we learned there were 17 more coming in, we decided that we wanted to -- 18 it would be prudent to have a consistent approach 19 to how we in enforcement handle those particular 20 cases. 21 BY MR. SOUTHWICK 22 Q And was there a memorandum or e-mail</p>
<p>Page 26</p> <p>1 speculation and outside the scope. If you know, 2 you can answer. 3 THE WITNESS: Okay. I'd like to 4 address two things. Cases involving religious 5 exemptions are not currently listed on our cases 6 of interest list. That is a printed list that's 7 shared with our offices. 8 The area of cases involving religious 9 exemption was something that we didn't add 10 formally to the cases of interest list, but that 11 we made clear to our regional offices that we 12 wanted to have headquarters review of actions 13 taken in any cases involving religious 14 exemptions. 15 That came about because we -- the 16 regional offices began receiving an unusual 17 number of Title IX cases involving religious 18 exemptions and communicated that through their 19 enforcement directors to headquarters personnel, 20 including the assistant secretary, including me. 21 And once we learned that we were 22 receiving multiple cases, which is unusual in</p>	<p>1 communication that went out to the regional 2 offices regarding this issue of religious 3 exemption? 4 A There was no memorandum or written 5 directive that went out from headquarters to the 6 regional offices regarding this particular area 7 of cases. 8 Q How was this direction then 9 communicated? 10 A The direction was communicated by the 11 enforcement directors, who are headquarters 12 personnel. It was communicated orally. 13 Q Were there any documentation or any 14 documents that would explain the directives that 15 were to be given? 16 A I'm sorry. Could you rephrase that? 17 I'm not sure I understand completely. Were 18 there -- 19 Q Sure. It sounds like there was some 20 directive that went out from headquarters to 21 regional offices, and you described that there 22 was the oral component. I'm just trying to</p>

1 determine whether there are any documents that  
2 would reflect the nature of that directive.  
3 A There were no -- as far as -- there  
4 were no documents issued from headquarters that  
5 reflected the nature of that directive. I can't  
6 speak to what might have happened in an  
7 individual regional office, but, certainly, there  
8 were no documents that embodied that directive  
9 that was sent out to the -- to the regional  
10 offices.

11 Q And did that directive come from you?

12 A The directive came from the assistant  
13 secretary -- or the acting assistant secretary.  
14 Pardon me.

15 Q And could you describe the general  
16 nature of the directive, the content?

17 A Generally, yes. The content of the  
18 directive was that headquarters wanted to be made  
19 aware of when any of the regional offices  
20 received a Title IX complaint where the religious  
21 exemption was implicated. They were continuing  
22 to come in, so we wanted to know which offices

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1 We did share that language that was  
2 in -- in a memo form, but it's -- I'm  
3 distinguishing it from the directive that went  
4 out that said we want to be aware of these cases,  
5 and any steps you take in these cases, we need to  
6 see what your proposed step is in headquarters.

7 Q So the -- the new language that you're  
8 talking about, was that language to be used in  
9 the event that an investigation was to be opened  
10 or in the event of the dismissal of a complaint  
11 or -- or both?

12 A The new language is to be used in the  
13 event a case is going to be opened. And it is to  
14 be used in -- with regard to the opening of a  
15 Title IX case.

16 Q And do you have that language in the  
17 materials that you used to prepare for the  
18 deposition today?

19 A Yes. It's -- the language is  
20 incorporated in a sample letter that's provided  
21 in the materials that we have.

22 Q And has that language been -- has that

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1 were receiving these so that we knew, you know,  
2 where they were.

3 We also informed the offices orally  
4 that any action they propose to take with regard  
5 to, for example, opening one of those complaints  
6 for investigation or dismissing one of those  
7 complaints for investigation needed to be vetted  
8 by headquarters prior to taking that particular  
9 step.

10 I would add that this was not part of  
11 the oral directive about, you know, letting us  
12 know when you receive these cases, informing and  
13 sending up to headquarters a draft for an action  
14 that you propose to take, whether it's a proposed  
15 opening or a proposed dismissal.

16 I would add that we also shared with  
17 the regional offices -- not in the form of a  
18 directive of the sort I just described, but we  
19 shared with the regional offices language that we  
20 wanted the regional offices to use in letters of  
21 notification. Those are letters that we would  
22 use if we were opening a case.

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1 language been used at all to this -- strike that.  
2 Has -- has this language been used yet  
3 in a letter from OCR regarding an actual  
4 complaint?

5 A Yes. It has been used once.

6 Q And in what complaint was it used with  
7 respect to?

8 MS. SNYDER: Objection. Outside the  
9 scope of the deposition topics.

10 If you know the answer, you can answer  
11 in your personal capacity.

12 THE WITNESS: The letter issued in a  
13 complaint filed against [REDACTED].

14 BY MR. SOUTHWICK

15 Q And can you describe the nature of that  
16 complaint against [REDACTED]

17 MS. SNYDER: Objection. You're outside  
18 the scope of the deposition topics.

19 If you know the answer, you can respond  
20 in your personal capacity.

21 THE WITNESS: I do not recall the very  
22 specific issue that was raised in the [REDACTED]

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9 (Pages 30 - 33)

1 [REDACTED] complaint.

2 It is my recollection that it was an  
3 issue raised broadly in the LGBTQ+ area, but I  
4 don't remember the specifics of the allegation.

5 BY MR. SOUTHWICK

6 Q And did you review any documents  
7 relating to the [REDACTED] complaints in  
8 preparation for your deposition today?

9 A I did not.

10 Q In this new directive process for  
11 religious exemption determinations, where --  
12 where does the religious exemption question end  
13 up at headquarters? Is there one person in  
14 charge of it? Is there a group of people?  
15 Where -- where does it go from the regional  
16 office to headquarters?

17 MS. SNYDER: Objection. Ambiguous and  
18 compound.

19 THE WITNESS: And, Mr. Southwick, I  
20 want to ask, where does the -- where does the  
21 religious exemption process -- could you clarify  
22 that for me, please?

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1 that the proposed opening or dismissal --

2 actually, that document should come forward to  
3 headquarters, so -- but we're not asking for a  
4 copy of the complaint to be sent up.

5 When -- and, again, if -- I'm sorry to  
6 ask you one more time, but the process -- the  
7 process you're asking about is related to who in  
8 headquarters addresses?

9 Q So let's say that the Seattle regional  
10 office receives a complaint that involves a  
11 religious exemption and then makes a  
12 recommendation that they want to dismiss that  
13 complaint on the basis of the religious  
14 exemption. That would then go to headquarters  
15 for a determination; is that correct?

16 A That is correct.

17 Q And then who at headquarters would be  
18 making that determination?

19 A There is a group of enforcement  
20 personnel, senior enforcement personnel at  
21 headquarters, who would be making that  
22 determination. Well, the determination would

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1 BY MR. SOUTHWICK

2 Q I can. So if under the new directive a  
3 regional office receives a complaint that  
4 involves a religious exemption component, my  
5 understanding based on your prior testimony is  
6 that that complaint is supposed to be sent to  
7 headquarters, and so my question is: Who at  
8 headquarters is in charge of handling the  
9 religious exemption issues that get sent to  
10 headquarters?

11 A Let me -- let me correct your  
12 understanding. The complaint itself -- we don't  
13 require that the complaint itself be -- be sent  
14 to headquarters. We just need to know that a  
15 complaint has been filed. We can certainly look  
16 at the complaint through our case management  
17 system, but we're not requiring the offices to  
18 send the complaint forward.

19 The requirement is that if, for  
20 example, the office is recommending that we open  
21 the complaint for investigation or if the office  
22 is recommending that we dismiss the complaint

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1 ultimately be made by the acting assistant  
2 secretary in discussion with a group of senior  
3 management personnel from enforcement.

4 Q And can you give me the names of the  
5 senior enforcement personnel?

6 A Yes. I am one of the senior  
7 enforcement personnel. Others are Melanie Velez,  
8 who is an acting enforcement director. That's  
9 V-E-L-E-Z. Another -- and then four enforcement  
10 directors, Emily McCarthy, Lisa Chang, Mia  
11 Karvonides. Let's see. Lisa, Mia, Emily. Meena  
12 Morey Chandra, C-H-A-N-D-R-A. They're  
13 currently in -- two are brand new, so they've  
14 just been added.

15 But cases that come to headquarters for  
16 review, cases on the cases of interest list and  
17 now cases involving Title IX actions that  
18 implicate religious exemptions are reviewed by  
19 that group. And I will also include senior  
20 personnel -- senior counsel to the assistant  
21 secretary, Jasmine Bolton.

22 And we review what's been sent forward.

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10 (Pages 34 - 37)

1 We have a discussion about what our thinking is  
2 with regard to that, but ultimately the decision  
3 may -- a decision in terms of should the document  
4 issue or not, do we have further work to do, is  
5 made by the assistant -- the acting assistant  
6 secretary.

7 Q And has that group you just described  
8 made any recommendations to the acting assistant  
9 secretary -- let me rephrase.

10 Was that group that you just described  
11 involved in a recommendation regarding [REDACTED]  
12 [REDACTED]?

13 A Yes. That group made a recommendation  
14 regarding [REDACTED] [REDACTED] regarding to -- with  
15 regard to the issuance of the letter of  
16 notification.

17 Q And then in the [REDACTED] [REDACTED] case,  
18 that group's recommendation would go up to the  
19 acting assistant secretary, who would ultimately  
20 make the decision?

21 A We meet with the acting assistant  
22 secretary as a group, so it's not forwarded on.

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1 assistant secretary -- the acting assistant  
2 secretary. The dismissal letter issued on  
3 October 19th, 2021.

4 Q And did that group consider any issues  
5 relating to the religious exemption to Title IX  
6 during its discussion?

7 A We did not consider those issues for  
8 the purpose of endorsing the dismissal. The  
9 dismissal came to us under -- under another  
10 rubric that is frequently used, one in OCR under  
11 our CPM. Where a case with the same or similar  
12 operative facts is filed in a state or federal  
13 court, we dismiss the case in OCR.

14 Q But did you have any discussions about  
15 the religious exemption issues related to Title  
16 IX?

17 MS. SNYDER: I'm going to object. I  
18 think he might be treading into deliberative  
19 issues. I'm -- and, actually, at this point, I'm  
20 going to advise him not to answer that question  
21 based on the deliberative process privilege.

22

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1 She's part of the group that meets to discuss  
2 cases that come to headquarters for headquarters  
3 review.

4 So the decision is made -- for example,  
5 the decision in [REDACTED] was -- to issue the  
6 letter of notification was made in that group  
7 after discussion. The assistant -- the acting  
8 assistant secretary endorsed the recommendation  
9 we made to issue the letter.

10 Q And has that group considered any other  
11 complaints besides the one involving [REDACTED]  
12 [REDACTED]?

13 A Yes, we have. We considered one other  
14 complaint. It's listed on the complaint chart  
15 that you have at Bates 002. That's Brigham Young  
16 University.

17 Q And which one was that?

18 A That's Brigham Young University,  
19 08212212. And you can see the actions taken with  
20 respect to this complaint. We issued the  
21 dismissal letter after review by headquarters,  
22 the headquarters group, and the assent of the

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1 BY MR. SOUTHWICK

2 Q Are you going to follow your counsel's  
3 instruction?

4 A Yes, I am.

5 Q Given that the decision with respect to  
6 the BYU complaint you just mentioned was made on  
7 a non-religious exemption basis, why was the --  
8 the headquarters group consulted regarding that  
9 complaint?

10 A Because the complaint implicated a  
11 religious exemption issue, and it was one of the  
12 complaints we asked the regional offices to make  
13 the headquarters group aware of.

14 But it was because of that implication  
15 of a religious exemption issue that it came to  
16 headquarters, and as we said, any action, whether  
17 it's dismissal or opening, needed to come up to  
18 headquarters for review prior to any issuance  
19 of -- of a letter confirming whatever action  
20 you're taking.

21 Q So other than that BYU complaint and  
22 the [REDACTED] complaint, has that group

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11 (Pages 38 - 41)

Randolph Wills 30(b)(6) - October 21, 2021

1 considered any other Title IX complaints  
 2 regarding religious exemption issues?

3 A We have not.

4 Q Does that group -- the group that  
 5 you've described, does it have a name, or is  
 6 there a way that I can refer to it so that we all  
 7 know what I'm talking about?

8 A We've been referred to by various  
 9 names, but the one we use most often is -- is  
 10 just HQ or head -- HQ group.

11 Q Does that HQ group have regular  
 12 standing meetings?

13 A Yes.

14 Q And how frequently does the HQ group  
 15 meet?

16 A The HQ group meets one -- at least once  
 17 a week.

18 Q And are there specific meetings at  
 19 which religious exemption issues would be  
 20 presented, or could they be presented or  
 21 discussed at any of those HQ meetings?

22 A The HQ group meets for areas of

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1 the HQ group Title IX meeting is the meeting at  
 2 which religious exemption issues would be raised,  
 3 but along with, you know, whatever other Title IX  
 4 pressing business HQ group has; is that right?

5 A That is correct.

6 Q I also want to clarify when we -- when  
 7 you reference the BYU dismissal, in the -- the  
 8 chart that was produced to us today that you've  
 9 referenced, there are multiple BYU complaints.

10 Have the other two BYU complaints been  
 11 reviewed by the HQ group?

12 A No, they haven't.

13 Q Do you know why?

14 A Because work is ongoing on those cases.  
 15 Evaluation work is ongoing. And no decision --  
 16 no proposal -- no proposed decision has been made  
 17 yet by the -- by the regional office handling  
 18 those evaluations.

19 Q I'm going to try to use the fancy  
 20 technology now, so we'll do a test of it. You  
 21 should have access to Exhibit Share. And there  
 22 will be a marked exhibits folder, and there

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1 interest other than Title IX, and we also have a  
 2 regular meeting weekly for cases involving Title  
 3 IX issues. But it's much broader than just Title  
 4 IX cases with religious exemption implications.

5 We review, also, sexual violence cases,  
 6 sexual harassment cases, gender sex  
 7 discrimination cases in the Title IX group. So  
 8 it's broader than just considering cases  
 9 involving religious exemptions, but it is a Title  
 10 IX group, same headquarters group with -- I will  
 11 add now with -- depending on the nature of the  
 12 cases we're handling, we may bring somebody in  
 13 from our program legal group, because we're  
 14 developing new policy in an area not related to  
 15 religious exemption cases.

16 But it meets -- that group meets once a  
 17 week, and that group considered and got the  
 18 endorsement of the acting assistant secretary to  
 19 issue the dismissal letter in the Brigham Young  
 20 case and the opening letter in the [REDACTED]  
 21 [REDACTED] case.

22 Q Just to make sure I'm understanding,

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1 should be only one document in there right now,  
 2 which has been marked Exhibit 1.

3 Let me know if you're able to find  
 4 that.

5 A Yes, I -- I see the document. I  
 6 believe it's the notice of 30 -- yeah, 30(b)(6).

7 MR. SOUTHWICK: All right. So I just  
 8 want to introduce Exhibit No. 1 as the notice of  
 9 the 30(b)(6).

10 (Deposition Exhibit Number 1  
 11 was marked for identification.)

12 BY MR. SOUTHWICK

13 Q And have you seen this document before,  
 14 Mr. Willis -- Mr. Wills?

15 A I have.

16 Q And is it your understanding that you  
 17 are appearing today in response to this  
 18 deposition notice?

19 A That is my understanding.

20 Q And if you look at page 3 of the  
 21 Exhibit 1, there are three topics listed. The  
 22 first topic is "The status of Plaintiffs' Title

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12 (Pages 42 - 45)

<p>1 IX complaints."</p> <p>2 Are you prepared to provide testimony</p> <p>3 regarding Topic No. 1 today?</p> <p>4 A I am.</p> <p>5 Q And what did you do to prepare to</p> <p>6 provide testimony in response to topic 1?</p> <p>7 A In response to Topic No. 1, I reviewed</p> <p>8 documentation that was assembled, including the</p> <p>9 chart that we just referred to, by personnel,</p> <p>10 senior personnel in OCR and in enforcement,</p> <p>11 specifically Acting Enforcement Director Melanie</p> <p>12 Velez.</p> <p>13 MR. SOUTHWICK: Okay. I'm going to</p> <p>14 introduce that chart as an exhibit. It takes a</p> <p>15 second or two here. All right. I believe</p> <p>16 everyone, the witness and the lawyers -- I</p> <p>17 believe how Exhibit Share works is that in order</p> <p>18 to see the new exhibit that I have marked,</p> <p>19 Exhibit 2, you will need to refresh your screen.</p> <p>20 So, Mr. Wills, after you've done that,</p> <p>21 if you could let me know if you see Exhibit 2 in</p> <p>22 there.</p>	<p>1 complaint's processing, the regional office, the</p> <p>2 OCR regional office that is responsible for the</p> <p>3 processing of the complaint.</p> <p>4 This is a list that also indicates</p> <p>5 whether the complainant in the complaint filed</p> <p>6 with OCR is also a plaintiff in the action we're</p> <p>7 here for today.</p> <p>8 It also indicates whether a waiver of</p> <p>9 OCR's timeliness requirement has been requested</p> <p>10 and the status of what that waiver request might</p> <p>11 be.</p> <p>12 And it also provides a section for a</p> <p>13 brief description of communication/interaction</p> <p>14 with the complainant/plaintiff, calling for the</p> <p>15 date and type of that communication.</p> <p>16 Q You referenced the docket number, and I</p> <p>17 see there that there's a docket number.</p> <p>18 Is that -- is that a number that OCR</p> <p>19 will assign when it is -- when it has received a</p> <p>20 complaint that it is then going to process for</p> <p>21 evaluation?</p> <p>22 A That is correct. Every complaint</p>
<p>Page 46</p> <p>1 (Deposition Exhibit Number 2</p> <p>2 was marked for identification.)</p> <p>3 THE WITNESS: I see Exhibit 2, the</p> <p>4 chart.</p> <p>5 MR. SOUTHWICK: All right. And just</p> <p>6 since we're now starting to use this Exhibit</p> <p>7 Share, I'll take it that all counsel are able to</p> <p>8 access your Exhibit Share, not having any</p> <p>9 problems? If anyone's having problems, go ahead</p> <p>10 and raise it right now, and let's try to take</p> <p>11 care of it. All right. The technology is</p> <p>12 working for once. That's great.</p> <p>13 BY MR. SOUTHWICK</p> <p>14 Q Okay. Well, I've marked Exhibit 2.</p> <p>15 And just for the record, Mr. Wills, could you</p> <p>16 tell me -- describe Exhibit 2 for me.</p> <p>17 A Yes. Exhibit 2 is a listing of</p> <p>18 complaints, Title IX complaints, that have --</p> <p>19 wherein religious exemption is implicated.</p> <p>20 It lists the docket number, the name of</p> <p>21 the recipient, the date the complaint was</p> <p>22 received, the current stage of -- of a</p>	<p>1 receives a docket number.</p> <p>2 Q All right. And so it looks to me like</p> <p>3 all the complaints referenced here have a docket</p> <p>4 number; is that correct?</p> <p>5 A That is correct.</p> <p>6 Q And so that means -- having a docket</p> <p>7 number, that means that the process has at least</p> <p>8 started on OCR's end; is that right?</p> <p>9 A That is correct.</p> <p>10 Q All right. And then you said there's</p> <p>11 the column recipient. That's pretty</p> <p>12 self-explanatory. The date it was received.</p> <p>13 I do want to ask -- stage. So stage</p> <p>14 here, most of these say eval, which I am -- does</p> <p>15 that stand for evaluation stage?</p> <p>16 A That stands for evaluation, yes.</p> <p>17 Q Can you describe to me what the</p> <p>18 evaluation stage is?</p> <p>19 A Yes. Broadly, the evaluation stage in</p> <p>20 this -- in the -- what's considered in the</p> <p>21 evaluation stage is set out in OCR's Case</p> <p>22 Processing Manual, but an overview occurs during</p> <p>Page 49</p>

1 evaluation. This is the -- this is the point in  
2 a complaint's life in OCR where we determine,  
3 first of all, whether we have jurisdiction,  
4 whether the complaint is timely, whether what we  
5 have before us is actually even a complaint. And  
6 there are provisions in the Case Processing  
7 Manual that describe what we would not consider  
8 to be a complaint.

9       But generally speaking, we are  
10 looking -- as the Case Processing Manual lays  
11 out, we're looking at timeliness. If it's not  
12 timely, we look to see whether a waiver of the  
13 timeliness requirement has been requested. We  
14 look to see whether we have subject matter  
15 jurisdiction, personal jurisdiction.

16       Also, there -- in many of our cases, we  
17 require a consent form signed by the complainant  
18 so that we can share a certain amount of personal  
19 information in particular with the recipient so  
20 that the recipient can provide a response to the  
21 complaint. So that is an issue that we generally  
22 consider at the -- at the evaluation stage.

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1 processing arm.  
2       That is a request that ultimately must  
3 be decided by the assistant -- acting assistant  
4 secretary or the assistant secretary, and the  
5 request itself is processed through to the acting  
6 assistant secretary or assistant secretary by our  
7 program legal group. The enforcement group does  
8 not process or weigh in on any religious  
9 exemption applications for assurances.

10      Q   Can you explain to me the -- what the  
11 program legal group refers to?

12      A   Program legal group is the component of  
13 the Office for Civil Rights that is responsible  
14 primarily for working closely, of course, with --  
15 with political appointees, the assistant  
16 secretary, the development of policy,  
17 interpretations of the statutes we enforce.

18       They are also responsible for  
19 reviewing technical assistance presentations we  
20 make to ensure that they're consistent with  
21 policy, that we're properly articulating policy  
22 of OCR and the law.

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1       We also consider at the evaluation  
2 stage whether the complaint must be dismissed  
3 pursuant to any of the dismissal provisions in  
4 Section 108 of the Case Processing Manual.

5      Q   And would a religious exemption  
6 decision be made at this stage of the proceeding,  
7 at the evaluation stage?

8      A   Mr. Southwick, I want to ask you what  
9 you mean by a religious exemption decision.

10     Q   Title IX has a religious exemption --  
11 strike that.

12     Will religious exemption issues  
13 relating to the Title IX religious exemption --  
14 will those religious exemption issues be  
15 considered by OCR during this evaluation stage?

16     A   Religious exemption issues will be  
17 considered by OCR -- they would be considered by  
18 OCR if a recipient makes a request for an  
19 assurance of exemption either during the  
20 evaluation phase or prior to the evaluation  
21 phase, and that request is not handled by  
22 enforcement. We are the -- we are the complaint

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1       They are also responsible for the  
2 collection and implementation and publication of  
3 OCR's civil rights data collection, which is, as  
4 you may know, a very broad-based collection of  
5 data from thousands of institutions around the  
6 country concerning all of our statutory areas and  
7 issues in those areas, very broadly, is what --  
8 that's what the program legal group does.

9       And I will include in that, they are  
10 the group that handle -- I'm going to use the  
11 word handle or process here -- requests for  
12 assurances of religious exemption that are made  
13 by -- by religious institutions or allegedly  
14 religious institutions. That is their role.

15       The request is sent to headquarters or  
16 sent to the assistant secretary. The request is  
17 referred to the program legal group for  
18 evaluation, for determination of whether  
19 additional information is necessary, ultimately,  
20 then, for a recommendation that the program legal  
21 group will make to the assistant secretary  
22 regarding whether the assurance should be sent or

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14 (Pages 50 - 53)

1 whether it should not.  
2 Q And when -- you've -- you've used the  
3 term assurance. Are you referring to the  
4 regulatory process whereby an educational  
5 institution can formally request an assurance of  
6 exemption and then receive a response from the  
7 Office of Civil Rights?

8 A Yes, that is correct. Excuse me.

9 Q I'd like to know what happens to a  
10 complaint that comes in to a regional office.  
11 And in that -- in this evaluation stage, are  
12 there issues that are reviewed first before  
13 others?

14 For example, is timeliness the first  
15 issue that gets reviewed, or are all those --  
16 subject matter jurisdiction, personal  
17 jurisdiction, timeliness, are all those  
18 considered together contemporaneously?

19 MS. SNYDER: Objection. You're outside  
20 the scope of the deposition topics.

21 If you know, you can answer in your  
22 personal capacity.

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1 There is a provision in 108 that says  
2 we need to -- basically need to know the who,  
3 what, where, when, how and why, and very often we  
4 don't get enough information from a complainant.  
5 So we will also, at that point, once we determine  
6 that there is -- the complaint is timely, it  
7 states a claim under one of the laws that we  
8 enforce, we have subject matter -- we have  
9 personal jurisdiction -- again, which is usually  
10 a matter of course -- we will then look to that  
11 issue, do we have enough information to go  
12 forward to open a complaint.

13 So I -- in my personal capacity, I  
14 can't tell you that there is a rigid order that  
15 we follow. We don't do all of this  
16 simultaneously, because as I said, for the most  
17 part, we -- you know, subject matter jurisdiction  
18 is evident generally from our first reading of  
19 the complaint. We will look to timeliness very  
20 early on the process. We'll look to request for  
21 waiver early on in the process.

22 And assuming those hurdles are

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1 THE WITNESS: I'll answer in my  
2 personal capacity.

3 Generally speaking -- generally  
4 speaking, we don't have an issue with subject  
5 matter jurisdiction or personal jurisdiction,  
6 generally speaking. Most of the recipients we're  
7 dealing with, we know that we -- we can certainly  
8 tell from the allegation whether we have subject  
9 matter jurisdiction. It's -- we're very familiar  
10 with most of the entities we deal with in our  
11 regional offices, so personal jurisdiction is not  
12 generally an issue, either. Occasionally, but  
13 generally speaking, it is not.

14 Timeliness is always a consideration,  
15 and along with timeliness -- I made reference  
16 earlier to Section 108, the dismissal --  
17 dismissal provisions. One of the other very  
18 important dismissal provisions has to do with  
19 whether we have enough information to understand  
20 the nature of the complaint, enough information  
21 from which we could possibly infer discrimination  
22 has occurred.

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1 surmounted and they -- which they must be, we'll  
2 look to see whether we actually have enough  
3 information to go forward. And that information  
4 also may include the date of the incident that  
5 we're -- that we're looking at.

6 So it's -- it's not, as I said, a rigid  
7 do this first, do that next, do the following  
8 third, but it all happens early in the process.

9 BY MR. SOUTHWICK

10 Q To clarify some of the terms here, for  
11 purposes of personal jurisdiction regarding a  
12 Title IX complaint, the main thing or the  
13 exclusive factor would be whether or not the  
14 educational institution is a recipient of federal  
15 financial assistance; is that -- is that right?

16 A That's -- yes, that is correct. And  
17 that is referred to in -- actually in the Case  
18 Processing Manual, Section 102, subsection c.

19 MR. SOUTHWICK: Let's go ahead and mark  
20 our next exhibit as the Case Processing Manual.  
21 I'm marking the Case Processing Manual as Exhibit  
22 No. 3. And it might take a minute. All right.

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15 (Pages 54 - 57)

<p>1 I think it should be in there now. 2 (Deposition Exhibit Number 3 3 was marked for identification.) 4 MS. SNYDER: Did yours freeze? 5 THE WITNESS: Yes. It's -- I'm opening 6 it right now. Yes, it's open. I can see it. 7 BY MR. SOUTHWICK 8 Q All right. So is Exhibit 3 the OCR 9 Case Processing Manual that is currently in 10 effect? 11 A Yes. This is the -- OCR's Case 12 Processing Manual that went into effect on 13 August 26, 2020. 14 Q And if you had to just generally 15 describe this manual, how -- how would you 16 describe this manual? What is -- what is its 17 purpose? 18 A I would generally describe this manual 19 as the manual that sets forth OCR's case 20 processing procedures. It is a roadmap to OCR's 21 case processing procedures. 22 Q And it discusses some of the issues,</p>	<p>1 based on race, color, national origin, sex, 2 disability, or age; discrimination in violation 3 of the Boy Scouts of America Equal Access Act of 4 2001, or retaliation for the purpose of 5 interfering with any right or privilege secured 6 by the civil rights laws regulations enforced by 7 OCR, or as a result of making a complaint, 8 testifying, or participating in any manner in an 9 OCR proceeding. 10 It then lists the statutes. 11 Q And one of those -- 12 A I'm sorry. Excuse me? 13 Q Go ahead. Sorry to interrupt you. 14 A No, I was going to say it just lists 15 the statutes that grant OCR jurisdiction and 16 authority to investigate complaints that are 17 filed pursuant to the -- 18 Q And one of those statutes is Title IX, 19 correct? 20 A That is correct. 21 Q And does the issue of a religious 22 exemption to Title IX -- is that part of the</p>
<p>Page 58</p> <p>1 personal jurisdiction, subject matter 2 jurisdiction, et cetera; is that -- is that 3 right? 4 A That's correct. 5 MS. SNYDER: Object -- objection. 6 Vague. 7 THE WITNESS: Answering in my personal 8 capacity, yes, it -- it does. 9 BY MR. SOUTHWICK 10 Q So we went over personal jurisdiction 11 before. Subject matter jurisdiction, what 12 your -- what is the Office of Civil Rights 13 looking for to establish subject matter 14 jurisdiction over a complaint? 15 A I'm going to refer you to Section 102, 16 subsection b of the Case Processing Manual, which 17 is a subsection that addresses subject matter 18 jurisdiction. 19 For OCR to establish subject matter 20 jurisdiction, the written information must 21 allege, or OCR must be able to infer from the 22 facts given, an allegation of discrimination</p>	<p>1 subject matter jurisdiction analysis, or is that 2 a separate analysis? 3 A It is part of the subject matter 4 jurisdiction analysis that enforcement staff 5 would engage in if enforcement staff is aware 6 that the institution at issue either has an 7 assurance of a religious exemption or exemptions 8 or it -- that is where -- if we -- if we 9 understand that this institution -- I recognize 10 this institution's been before OCR before, and 11 I'm an investigator in the enforcement area. And 12 I say, oh, you know, oh, this institution has 13 been across my desk before. They have, I 14 believe, a religious -- an assurance of religious 15 exemption. I don't know exactly what that -- 16 what the nature of that exemption is, but I 17 believe they have one. 18 At that point, the investigator will 19 contact our program legal group and say, here's 20 the name of the institution, I believe they have 21 a religious exemption. Program legal will 22 perhaps say yes, they do. We will then ask, what</p>

<p>1 is -- what precisely is that exemption? What 2 does it cover? 3 If at that point we learn that it 4 covers -- having reviewed the documents that 5 grant it and the assurance of exemption, if -- if 6 we learn that it covers the allegations of the 7 complaint before that investigative staff member, 8 that investigative staff member will draft a 9 dismissal based on lack of subject matter 10 jurisdiction for review by the headquarters 11 group. 12 And then the headquarters group will 13 review all of that documentation and make a 14 determination. The acting assistant secretary or 15 the assistant secretary would make a 16 determination as to whether that dismissal should 17 issue or not. 18 There are circumstances where a 19 complaint lands on an investigator's desk. The 20 investigator has no idea whether -- first of all, 21 whether it's possibly a religious institution. 22 Sometimes you can -- a name will suggest that.</p>	<p>1 that there are exceptions and exemptions to Title 2 IX, without going into the nature of what those 3 are. And if the recipient intends to -- it 4 informs the recipient that if you intend to apply 5 for an assurance with regard to an exception or 6 exemption, here's how you do it, refers you to 7 the website, which will refer you to make 8 application to the assistant secretary. 9 And in the meantime, OCR will -- 10 normally, when we issue letters of notification 11 opening a case, we also attach a data request. 12 And as in our regular practice, we will attach a 13 data request to these letters as well, and the 14 data request will ask whatever it asks for 15 depending on what the allegations of the case 16 are. 17 But we will inform the recipient in 18 that letter of notification, in that new language 19 that I pointed out, that they -- if they intend 20 to make a request for an assurance of an 21 exemption or exception, they are not required to 22 respond to the data request in the time frame</p>
<p>Page 62</p> <p>1 Very often, names do not suggest that. That is 2 one of the reasons why -- assuming other 3 timeliness issues have been met and we have 4 enough information otherwise to go forward from 5 which we can infer a possible violation of one of 6 our laws, it's a Title IX case. We don't know 7 that particular institution. It may sound like a 8 religious institution or it may not. 9 What we are doing now is set forth in 10 the sample letter that's part of our binder that 11 we've referred to earlier this morning, and that 12 is if we -- if we decide that it's timely or that 13 we're granting a waiver of the timeliness 14 requirement and we have enough information from 15 which we can infer that a possible violation has 16 occurred or is occurring, we will issue a -- 17 well, we will propose -- the investigator will 18 propose to open that investigation. 19 So the investigator will propose a 20 letter that looks very much like the one that we 21 have in the binder as a sample letter, including 22 the language that, among other things, states</p>	<p>1 that they normally would, which is usually 20 2 days. 3 So that -- that's in a situation where 4 we -- an investigator has no idea whether this 5 particular case involves a religious institution 6 or suspects that, well, it looks like a religious 7 institution. This letter will go out. And this 8 letter is going out actually now in all Title IX 9 cases, all of them, not ones where we just 10 suspect there might be a religious exemption 11 issue. It's going on in all Title IX cases, even 12 to institutions we know full well are not 13 religious in nature and may not even have a 14 religious exemption issue. 15 So we will issue that letter -- 16 and because we have just started doing this, I 17 don't have a long history to describe of how 18 responses to that letter have been made -- but it 19 may be that the recipient who receives that 20 letter may decide to request an assurance of 21 religious exemption and engage in that process 22 that I just described in broad overview with PLG</p>

<p>1 up to the assistant secretary level. 2 If that happens and a religious 3 exemption -- and an assurance issues a religious 4 exemption or religious exemptions, the 5 investigative office will learn about that and 6 make a determination as to whether that exemption 7 covers the allegations in the complaint. And if 8 the investigative staff believes it it does, 9 we'll propose a dismissal. If it believes it 10 doesn't, the investigation will continue. 11 That is very broadly what the process 12 looks like now, but I -- I do want to be very 13 clear that enforcement staff are not in any way 14 involved in the evaluation of a request for 15 assurance of exemption. That is the program 16 legal group's responsibility up to the -- the 17 assistant secretary. 18 But we -- once the exemption is granted 19 or is -- is assured or not, we certainly -- the 20 enforcement group will look at that exemption, 21 the extent of the exemption, is it applicable to 22 the issues before us, and a decision will be made</p>	<p>1 MR. SOUTHWICK: All right. Let's do 2 that. 3 VIDEO TECHNICIAN: We are going off the 4 record at 11:21. 5 (Recess 11:21 a.m. to 11:34 a.m.) 6 VIDEO TECHNICIAN: We are back on the 7 record. The time is 11:34. Please proceed. 8 BY MR. SOUTHWICK 9 Q Mr. Wills, we're back on the record. 10 And do you understand that you are back under 11 oath, and are you prepared to continue giving 12 testimony today? 13 A I'm prepared to continue giving 14 testimony. I understand that I'm under oath. 15 MR. SOUTHWICK: I'd like to go ahead 16 and introduce our next exhibit, which is going to 17 be a bundle of documents that was produced to us 18 this morning as Topic 3, but I'll be marking this 19 exhibit as Exhibit 4. And I'm loading it here. 20 All right. Exhibit 4 should be marked and appear 21 in your marked exhibits folder now. 22 (Deposition Exhibit Number 4</p>
<p>Page 66</p> <p>1 there. But that's not -- that's not making the 2 decision on whether there should be an assurance 3 or not. 4 Q And has this process been followed with 5 respect to the [REDACTED] case? 6 MS. SNYDER: Objection. You're outside 7 the scope. 8 If you know the answer, you can -- you 9 can do so in your personal capacity. 10 THE WITNESS: Answering in my personal 11 capacity, the letter of notification issued in 12 [REDACTED] -- I don't know the date it was issued, 13 but it was fairly recently. 14 So I -- I don't know whether [REDACTED] 15 -- I don't know where they are in the -- whether 16 they requested an assurance or where they are in 17 that process, if so. 18 MR. SOUTHWICK: Thank you, Mr. Wills. 19 I propose us taking a ten-minute break here, if 20 everyone's all right with that. 21 MS. SNYDER: That's fine, Paul. 22 THE WITNESS: I'm fine. Thank you.</p>	<p>Page 68</p> <p>1 was marked for identification.) 2 MS. SNYDER: Just one moment, Paul. 3 Just a technical glitch. 4 MR. SOUTHWICK: All righty. 5 MS. SNYDER: Thank you. 6 BY MR. SOUTHWICK 7 Q Mr. Wills, if you could let me know 8 when you're able to access Exhibit 4. 9 A I have accessed Exhibit 4. 10 MS. SNYDER: I -- 11 MR. SOUTHWICK: All right. 12 MS. SNYDER: -- had the technical 13 glitch, Paul. 14 MR. SOUTHWICK: Oh, you did. Okay. 15 Yeah. 16 MS. SNYDER: Sorry. 17 MR. SOUTHWICK: No worries. Just so 18 people can get on the right page -- I won't ask 19 any questions, but I'm going to be looking at 20 page 16 of Exhibit 4, which is Bates No. 21 ED3.000016. 22 MS. SNYDER: We're sorted, Paul, I</p>

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18 (Pages 66 - 69)

1 think, if you're ready.  
2 MR. SOUTHWICK: Okay. Great.  
3 BY MR. SOUTHWICK  
4 Q All right. Mr. Wills, have you  
5 scrolled down to page 16 of Exhibit 4, which  
6 should be the letter that I believe you're  
7 referring to that went out to [REDACTED] -- or  
8 [REDACTED] ?  
9 A Yes. I have -- I have page 16 open.  
10 Q All right. Could you -- for the  
11 record, could you just describe again what the  
12 Exhibit 4, pages 16 through 18 -- could you tell  
13 me what that letter is?  
14 A Yes. This is a letter of notification  
15 that OCR issues when it is opening a complaint  
16 for investigation. This letter indicates that we  
17 have determined that we're opening a particular  
18 complaint for investigation.  
19 It includes language concerning the  
20 assertion of jurisdiction, a statement that we  
21 are opening the complaint for investigation, a  
22 reference to, you know, our case processing

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1 procedures, a statement that we're going to be  
2 conducting an investigation, a request for data  
3 that, as I said earlier, generally accompanies  
4 these letters of -- of notification that issue.  
5 It also includes, as our letters of  
6 notification do, a statement that the particular  
7 recipient who receives this letter may not  
8 harass, coerce, intimidate, discriminate or  
9 otherwise retaliate against an individual because  
10 the individual asserts a right or privilege under  
11 laws enforced by OCR or files a complaint,  
12 testifies, assists, participates in a proceeding  
13 under a law enforced by OCR. If this happens,  
14 the individual may file a retaliation complaint  
15 with OCR.  
16 And then some additional information  
17 about the contact person in the particular  
18 regional office who would be handling the  
19 complaint.  
20 Q And this one's at the Chicago regional  
21 office; is that right?  
22 A I'm --

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1 Q From the top of the letterhead, it  
2 looks like, coming out of Chicago --  
3 A At the top of -- I'm sorry. Yes. At  
4 the top of the letterhead, this is -- this is the  
5 Chicago regional office.  
6 Q And the letter is dated September 24th,  
7 2021; is that accurate?  
8 A That is accurate.  
9 Q And then it looks like on the second  
10 page of the letter, ED3 17, that it asks for  
11 information within 20 calendar days, or the  
12 educational institution can request an assurance  
13 first. Is that -- is that accurate?  
14 A That's correct. The -- these -- the  
15 information concerning the recipient's ability or  
16 election to request an assurance is actually  
17 stated on the prior page, page Bates 16 at the  
18 bottom of the second paragraph. A recipient may  
19 do this before responding to the data request  
20 below.  
21 Q All right. So 20 days -- 20 calendar  
22 days after September 24th -- let's see -- six --  
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1 and has come and gone just barely.  
2 Are you aware of whether or not the --  
3 [REDACTED] [REDACTED] has responded to this letter  
4 from OCR?  
5 MS. SNYDER: Objection. Outside the  
6 scope. If you know, you can answer in your  
7 personal capacity.  
8 THE WITNESS: I am not aware of a  
9 response. I would have to contact personnel in  
10 OCR to determine the answer to that question.  
11 BY MR. SOUTHWICK  
12 Q Who would know the answer to that  
13 question?  
14 MS. SNYDER: Again, objection. You're  
15 outside the scope of the deposition topics.  
16 If you know the answer in your personal  
17 capacity, you can answer.  
18 THE WITNESS: My personal capacity, it  
19 would be Melanie Velez, who's the acting  
20 enforcement director with, at least up until very  
21 recently, oversight responsibility for the  
22 Chicago regional office.

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1 I could also contact directly the  
2 regional director of the Chicago regional office  
3 for an update, and I'm happy to do so.

4 BY MR. SOUTHWICK

5 Q I just want to zero in on the language  
6 that you were talking about that -- about  
7 exemptions and the language that's included in  
8 all OCR letters. I believe that that's referred  
9 to on the second paragraph of the first page of  
10 this letter that's part of Exhibit 4.

11 Can you read the specific language  
12 that's included on all the letters --

13 A Yes.

14 Q -- from that paragraph?

15 A Title IX and its implementing  
16 regulation contains several exemptions and  
17 exceptions from its coverage. See 20 U.S.C.  
18 section 1681(a)(1) through (9); 34 C.F.R.  
19 sections 106.11 to 106.15; see also OCR's webpage  
20 on exemptions from Title IX. If the particular  
21 recipient intends to claim an exemption from the  
22 application of Title IX and its implementing

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1 religious exemption on file, but one might be  
2 claimed in the process?  
3 A If the investigative staff member  
4 believes or has a recollection that this  
5 particular recipient in the past had requested a  
6 religious exemption or believes that there may be  
7 a religious exemption issue with regard to that  
8 particular recipient, based on the individual's  
9 knowledge, that investigative staff member would  
10 reach out -- would not send a complaint anywhere.

11 It would reach out to our program legal group,  
12 the Title IX group in program legal, and  
13 request -- first of all, request: Was there an  
14 assurance of religious exemption that issued, and  
15 if so, please send me a description of -- of the  
16 nature of the assurance.

17 If there was an assurance issued, the  
18 program legal group staff member will share the  
19 assuring letter from the assistant secretary with  
20 the investigative staff member, who will then  
21 analyze the allegations before him or her and  
22 determine preliminarily whether the assurance he

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1 regulation to this complaint, please contact the  
2 OCR staff member identified below. The recipient  
3 may do this before responding to the data request  
4 below.

5 Q And so the statement there is not  
6 limited to claiming a religious exemption, but is  
7 related to any of the exemptions allowed under  
8 Title IX; is that accurate?

9 A That's accurate.

10 Q So I'm just trying to make sure I  
11 understand the process here. So my understanding  
12 is that if a regional office receives a Title IX  
13 complaint, and it involves an educational  
14 institution that may claim a religious exemption,  
15 and there's some awareness from the OCR staff  
16 that they would then forward that complaint to --  
17 let me back up.

18 Maybe I could ask it this way: Could  
19 you describe the difference in how a complaint  
20 will be processed when there is already a  
21 religious exemption assurance on file at the  
22 Office of Civil Rights versus when there is not a

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1 or she has in hand at this point covers those  
2 allegations.

3 If it does, the investigative staff  
4 member -- member will propose to dismiss the  
5 complaint for lack of subject matter  
6 jurisdiction. That proposed dismissal will be  
7 forwarded to headquarters for review by the  
8 headquarters group.

9 If there is an exemption in place that  
10 PLG communicates with the investigative staff  
11 member, but it does not clearly cover the  
12 allegations that the investigator has in hand,  
13 the investigator will open the case -- will  
14 propose opening the case for investigation and  
15 will send a copy of this draft letter, tailored,  
16 of course, to the particular recipient, saying  
17 we're opening this case, this is the data we  
18 need.

19 It will contain the language I just  
20 read about the exception and exemption and the --  
21 you don't have to respond to the data request if  
22 you intend to move forward with a request for an

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20 (Pages 74 - 77)

1 assurance. That will get sent up to headquarters  
2 as well as a proposed opening, as the [REDACTED]  
3 letter was, and a decision will be made by the  
4 assistant secretary in consultation with the  
5 headquarters group to say, yes, issue the letter  
6 or, for some reason -- I don't know what -- might  
7 say we need more before we can do so.

8 Q I'd like to go back to Exhibit 2, which  
9 is the chart and -- it should be in the marked  
10 exhibits, Exhibit 2.

11 My question on Exhibit 2 is for any of  
12 these --

13 MR. DAVIS: I'm sorry. Hold on. I'm  
14 sorry. It's still loading on his computer.  
15 Apologies.

16 THE WITNESS: I have it now.

17 BY MR. SOUTHWICK

18 Q All right. On Exhibit 2, which  
19 contains the list of the docket numbers for all  
20 of the administrative complaints involving  
21 plaintiffs in this case, my question is: For any  
22 of these complaints listed on this Exhibit 2, has

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1 question of Melanie.

2 Q Other than Melanie, who else did you  
3 meet with in preparation for your deposition  
4 today?

5 A I -- from OCR, I met with Alice Yao,  
6 Y-A-O. Alice is the team leader of our Title IX  
7 team in the program legal group.

8 I met with all the counsel before you  
9 today as well from -- both from -- from DOJ and  
10 OGC. Actually, it was an additional attorney  
11 from OGC who is not present today that I also met  
12 with.

13 Q How many meetings did you have to  
14 prepare for your deposition today?

15 A I had meetings every day this week, and  
16 I had telephone conversations last week. I don't  
17 recall the exact number, but I certainly had, I  
18 believe, a couple of telephone conversations last  
19 week in preparation for this. And then I met in  
20 person every day this week.

21 Q Could you approximate the number of  
22 hours in total that you spent preparing for this

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1 a request been made to the program legal group to  
2 provide information regarding an assurance of  
3 exemption for the underlying educational  
4 institution?

5 A I do not know the answer to that  
6 question. I would have to consult with personnel  
7 in OCR to make that determination.

8 Q And who at OCR would be able to provide  
9 that information to you?

10 A I would -- I would pose the question  
11 first to Melanie Velez, the acting -- the  
12 enforcement director who was consolidating  
13 information for this litigation.

14 Q Did you talk with Melanie in  
15 preparation from your -- for your deposition  
16 today?

17 A I did, yes.

18 Q But you didn't ask her about whether or  
19 not any of these complaints had approached the  
20 program legal office for an assurance of  
21 exemption?

22 A That's correct. I did not ask that

1 deposition in terms of your meetings and phone  
2 calls?

3 A Between 22 and 25 hours, I would  
4 estimate.

5 Q And other than what's contained in the  
6 binder, electronic copy of which was provided to  
7 us, did you review any documents or e-mails,  
8 communications, in preparation for your  
9 deposition today?

10 A I reviewed an e-mail communication --  
11 I'm just trying to remember. An e-mail  
12 communication with Alice Yao.

13 Q What was the nature of that  
14 communication?

15 A It was a communication asking her  
16 whether we kept -- whether the PLG OCR website  
17 kept a publicly-facing list of recipients that  
18 have received assurances of religious exemptions.

19 Q And did you find out the answer to that  
20 question?

21 A The answer is -- is no, that there is a  
22 publicly -- what is publicly available is not a

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21 (Pages 78 - 81)

1 list, but somewhere on the website that I have  
 2 never navigated myself, so I can't tell you  
 3 exactly where, but on the website, there are the  
 4 letters requesting assurances and the letters of  
 5 assurance.

6 Q Is that up to date as far as you know?

7 A I do not know that.

8 Q Other than the e-mail correspondence  
 9 with Alice Yao and the documents in the binder,  
 10 did you review any other documents or  
 11 correspondences in preparation for your  
 12 deposition?

13 A I did not.

14 Q In the -- how long is the evaluation  
 15 stage of an OCR complaint supposed to take?

16 A There's no requirement in any of OCR's  
 17 documentation or memos to staff about a period of  
 18 time limit for evaluation stage or even a  
 19 recommendation that you should do your evaluation  
 20 within X number of days. OCR --

21 Q As the enforcement officer, do you --  
 22 do you have any -- do you have any guides, or do

1 resolved. It might be resolved by dismissal. It  
 2 might be resolved through an insufficient  
 3 evidence finding. It might be resolved because  
 4 we found a violation and entered into a  
 5 resolution agreement, or we believe there might  
 6 be a violation but don't have enough evidence to  
 7 prove it yet, but we still want the recipient to  
 8 engage in certain activities to correct what is a  
 9 concern that we've articulated. That needs to be  
 10 accomplished within -- according to that  
 11 particular goal, within 180 days of the filing of  
 12 the complaint.

13 So while there is no articulated  
 14 standard for you must complete your -- your  
 15 evaluations within a fixed period of time, the  
 16 GPRA goal, which is part of everyone's  
 17 performance plan and against which, at least  
 18 partially, significantly, all staff are measured,  
 19 stands as the motivator, if you will, to move  
 20 expeditiously in evaluating cases, because the  
 21 longer a case stays in evaluation -- and during  
 22 the evaluation stage, an important point to note

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1 you just let them kind of at will take however  
 2 long they want?

3 A The guide we have -- and this is  
 4 actually something that's articulated in  
 5 documents, including in performance plans for all  
 6 investigative staff, all the way up to my own  
 7 responsibility.

8 The guide we have is a government  
 9 performance -- it's -- it's called -- it's the --  
 10 the acronym is GPRA. It is an act from decades  
 11 ago about requiring agencies to set certain  
 12 productivity goals.

13 Our productivity goal in OCR is that  
 14 80 percent of the complaints received by OCR are  
 15 to be resolved within 180 days of receipt.

16 There is a second goal closely related  
 17 to that that is also published and a part of  
 18 everyone's performance plan that states that no  
 19 more than 25 percent of OCR's docket may be over  
 20 180 days old.

21 So there is that larger goal for the  
 22 complete resolution of a case, however a case is

1 is that in evaluation, generally speaking, not  
 2 every single instance, but generally speaking, in  
 3 the vast majority of complaints, there is no  
 4 communication yet with the recipient. We have  
 5 not -- we have not reached out to a recipient  
 6 until we formally open the case. They don't know  
 7 that somebody has filed a complaint against it  
 8 until we've actually issued a letter of  
 9 notification.

10 So the longer we're in the phase where  
 11 we're only speaking to the complainant, we -- if  
 12 we have enough information, that detracts from  
 13 the number of days you're going to have to engage  
 14 with the recipient in what is actually the most  
 15 meaningful part of an investigation, which is the  
 16 back and forth with both parties, to complete  
 17 your investigation within 180 days.

18 So there is -- there's an incentive to  
 19 work through evaluation expeditiously. There are  
 20 reasons why that doesn't happen, a variety of  
 21 those, but generally speaking -- and I use  
 22 generally very intentionally here -- there's an

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<p>1 incentive to investigations should not be taking 2 up an extraordinary amount of that time that 3 might be better used in an investigation if we, 4 in fact, open a case for investigation. 5 Q Do you have any internal benchmarks or 6 goals for the evaluation period in terms of time 7 to process? 8 A There are no enforcement-wide goals for 9 that. Regional offices may have their own 10 internal goals for their particular office staff 11 depending on the nature of the complaints they 12 have and the -- the number of complaints the 13 office is dealing with. They may have those. I 14 am not aware of any that I can tell you about 15 now. 16 But there are no goals articulated from 17 headquarters, from me or from anybody at 18 enforcement about here are stages that you should 19 try to meet or must meet in the evaluation 20 process. 21 Q How is OCR performing in terms of 22 meeting that 80 percent within 180 days?</p>	<p>1 A I'm sorry. I'm sorry. 2 Q G-P-R-A is what we're looking at in 3 terms of -- 4 A G-P-R-A. G-P-R-A. 5 Q Is there an average amount of time that 6 it takes to complete the evaluation stage of a 7 complaint? 8 A There is. 9 Q Would you describe that? 10 A This year -- this year, it was 73 days. 11 Q I'd like to ask about the timeliness -- 12 not the timeliness of processing the complaints, 13 but now going to the timeliness of the complaint 14 itself. 15 And is it accurate that the general 16 window is 180 days from the last discrimination 17 in order to file a timely complaint with OCR? Is 18 that accurate? 19 MS. SNYDER: I'm going to object as 20 outside the scope of the deposition. 21 If you know, you can answer in your 22 personal capacity.</p>
<p>1 MS. SNYDER: Objection. You're outside 2 the scope of the deposition topics. 3 If you know the answer, you can -- you 4 can answer in your personal capacity. 5 THE WITNESS: I know the answer because 6 I just reviewed our end of fiscal year data, and 7 we -- and all of -- all of the regional offices 8 met that goal, that particular GPRA goal, this 9 year. 10 BY MR. SOUTHWICK 11 Q And just so that I have it and the 12 court reporter, can you spell out the acronym 13 for GPRA? 14 A Government performance rating -- 15 results act. Government Performance Results Act, 16 I believe. And I don't know -- 17 Q Okay. 18 A -- the year of its enactment. 19 Q Okay. So like -- 20 A We're -- 21 (Inaudible crosstalk.) 22 Q -- G-P-R-A --</p>	<p>1 THE WITNESS: Yes, that is -- that is 2 accurate, what you just stated, Mr. Southwick. 3 BY MR. SOUTHWICK 4 Q And then according to the Processing 5 Manual, there's also a procedure to request a 6 waiver, so if we could go ahead and take a look 7 at that. So that's getting us -- 8 A That's Section 107 of the CPM. 9 Q Sorry. My screen is thinking. All 10 right. Okay. So we're looking at Section 107 11 there? 12 A That's correct. 13 Q All right. So I'd like to ask you a 14 couple questions. We're on Exhibit 3, which is 15 the OCR Processing Manual. We're looking at 16 Section 107, which is determining whether a 17 waiver should be granted. I've got the language 18 right in front of me. I'm going to ask you some 19 specifics there. 20 But can you tell me generally what the 21 waiver process -- what's the purpose of that 22 process and --</p>

1 MS. SNYDER: Objection. You're outside  
2 the scope of the topics.

3 If you know the answer, you can answer  
4 in your personal capacity.

5 THE WITNESS: Generally, the purpose of  
6 that process is to ensure that complainants with  
7 certain requests for waivers in certain  
8 situations that we deem appropriate still have  
9 the ability to file a complaint and have it  
10 processed by OCR as opposed to having it  
11 dismissed for lack of timeliness.

12 BY MR. SOUTHWICK

13 Q There are some particular grounds, and  
14 like I said, I'm going to ask you about those,  
15 but I wanted to know: Is there -- is there a  
16 policy or practice when looking for a waiver --  
17 does it matter whether it's 181 days versus 18  
18 years, or is that -- is there kind of a zone in  
19 which waivers are more readily granted than --  
20 than in other cases?

21 MS. SNYDER: Objection. Again, outside  
22 the scope. Additionally, it is an ambiguous

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1 MS. SNYDER: Again, objection. You're  
2 outside the topics of the 30(b)(6) deposition.  
3 If you know the answer, you can answer  
4 in your personal capacity.

5 THE WITNESS: OCR approaches a request  
6 for waiver the same way regardless -- there is --  
7 there is -- there is not a provision, written or  
8 unwritten, that says if -- if the -- if the  
9 complaint is untimely but within one year that it  
10 will give any special deference to it. No, that  
11 doesn't exist. The waiver request must be made.  
12 We will listen to the reasons for the request for  
13 waiver and make a determination accordingly.

14 But there's no extra weight given to a  
15 request if something's -- at least no formal or  
16 even informal that I'm ever -- have ever been  
17 aware of extra weight given to something that's  
18 occurred past the deadline, but within one year.

19 BY MR. SOUTHWICK

20 Q Wouldn't you agree that it's more  
21 likely that OCR would grant a waiver if it was at  
22 181 days than the 18 years?

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1 question and speculative.

2 But if you know the answer in your  
3 personal capacity, you can respond in -- in that  
4 capacity.

5 THE WITNESS: A request for a waiver  
6 could be made in either of the circumstances you  
7 just described, Mr. Southwick.

8 I cannot say -- I would be speculating  
9 what the result of that request would be, but I  
10 will tell you in my personal capacity, it would  
11 be hard to imagine that somebody could have a  
12 sufficient basis for a waiver to be granted if we  
13 received a complaint 18 years after the last  
14 alleged act of discrimination, just my  
15 observation and years of experience in OCR.

16 BY MR. SOUTHWICK

17 Q I'd like to ask again on Section 107,  
18 and I'd like to ask you in your representative  
19 capacity.

20 How does OCR approach waivers when the  
21 act of discrimination is outside of the 180 days,  
22 but is within one year of the discrimination?

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1 MS. SNYDER: Objection. Again, you're  
2 outside the scope. It's also a speculative  
3 question.

4 If you -- if you know the answer, you  
5 can answer in your personal capacity.

6 THE WITNESS: That calls for  
7 speculation that I just can't make,  
8 Mr. Southwick. As I said before, we evaluate all  
9 waiver requests objectively and make  
10 determinations there that way.

11 BY MR. SOUTHWICK

12 Q Do you keep any data on waiver requests  
13 in terms of how many are made, how many are  
14 granted, what percentage are granted?

15 MS. SNYDER: Again, objection. Outside  
16 the topics of the 30(b)(6) deposition.

17 You -- you can answer in your personal  
18 capacity if you know.

19 THE WITNESS: We don't --

20 MR. SOUTHWICK: Counsel, we can -- we  
21 can discuss later off the record, but these  
22 objections, I'm not understanding them. These

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24 (Pages 90 - 93)

1 are pretty consistent with the scope of the  
2 deposition as outlined. We're talking about the  
3 OCR Processing Manual, but we can -- we can talk  
4 about that further later.

5 BY MR. SOUTHWICK

6 Q Go ahead and respond to the question,  
7 Mr. Wills.

8 MS. SNYDER: My -- just to be clear, my  
9 objection stands, and I'm happy to discuss  
10 whatever you'd like off the record.

11 THE WITNESS: OCR does not maintain a  
12 data set where we can determine -- you know, go  
13 in and punch in some information and get a list  
14 of cases for which a waiver was requested and the  
15 basis of that waiver.

16 That will be recorded in a case file,  
17 but it's -- it's not something that we could  
18 access reading through individual case files.

19 BY MR. SOUTHWICK

20 Q And when we're looking at Exhibit 2,  
21 which is the chart of the OCR complaints, it  
22 indicates that there are waiver requests and that

1 you can testify in your personal capacity.  
2 THE WITNESS: Yes. Ordinarily, that  
3 determination is made by -- a recommendation is  
4 still made by the investigator staff member, the  
5 investigative attorney, but that would need to be  
6 confirmed and agreed to by the -- a supervising  
7 attorney in the office. Generally, it will be a  
8 team leader.

9 There are occasions where a request or  
10 a request for waiver is particularly complex that  
11 a chief attorney in the office might review it as  
12 well before -- in determining whether it could go  
13 forward. That would be made at the office level,  
14 but at the very least, a supervisor would have  
15 eyes on that request and have to agree to its  
16 issuance.

17 BY MR. SOUTHWICK

18 Q Does OCR consider a waiver based on the  
19 COVID-19 pandemic -- would it consider a request  
20 for a waiver on that basis?

21 MS. SNYDER: Objection. Again, outside  
22 the topics for the 30(b)(6) deposition.

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1 they are all pending; is that accurate?

2 A Yes, that is accurate.

3 Q Is the -- is the initial OCR  
4 investigator empowered to make a timeliness  
5 waiver determination, or does that go higher up  
6 the chain?

7 A Based on the directive from  
8 headquarters that we spoke of earlier today, the  
9 investigator would be empowered to make a  
10 recommendation regarding a waiver or a  
11 recommendation regarding timeliness or lack  
12 thereof, but that recommendation would need to go  
13 forward based on the earlier directive that was  
14 delivered orally to the headquarters group for  
15 review and assent.

16 Q Ordinarily, though, when there's not a  
17 sensitive or a case of interest, if it's just a  
18 regular case, who is empowered to make the  
19 timeliness determination?

20 MS. SNYDER: Objection. Again, outside  
21 the topics and the scope of the 30(b)(6)  
22 deposition. If you -- if you know the answer,

1 If you know the answer, you can testify  
2 in your personal capacity.

3 THE WITNESS: I would have to look back  
4 in order to -- I can't answer that question right  
5 now. I would have to look back to see whether --  
6 how -- how we handled -- and I think it changed  
7 over time how we handled issues with complainants  
8 and COVID issues.

9 I recall one complaint that we had  
10 where a complainant had been very ill with COVID,  
11 and we had a great deal of discussion about a  
12 waiver, which arguably could have fit into  
13 Section 107(b), unable to file a complaint  
14 because of incapacitating illness.

15 But beyond that recollection on my  
16 part, I would have to consult to see whether  
17 we've dealt with COVID and complainants in any  
18 other way. That was particularly salient because  
19 of the illness that was caused by COVID or at  
20 least exacerbated by COVID.

21 BY MR. SOUTHWICK

22 Q Does the Office of Civil Rights

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25 (Pages 94 - 97)

<p>1 currently consider complaints based on sexual 2 orientation or gender identity discrimination to 3 be -- does OCR consider itself to have subject 4 matter jurisdiction over complaints involving 5 sexual orientation and gender identity 6 discrimination under Title IX?</p> <p>7 A Yes, it does.</p> <p>8 Q And when did it make that 9 determination?</p> <p>10 A The determination -- let me back up.</p> <p>11 MS. SNYDER: Actually, let me object. 12 Again, I think you're beyond the scope of the -- 13 of the topics.</p> <p>14 But if you know in your personal 15 capacity, you can answer in that capacity.</p> <p>16 THE WITNESS: Even years ago, OCR would 17 accept cases involving sexual harassment, sexual 18 assault, that involved an LGBTQ student. That 19 was not an issue in any of the administrations 20 I've worked in.</p> <p>21 After Bosworth [sic], even in the last 22 administration, we determined that in other</p>	<p>1 your personal capacity, you can answer in that 2 capacity.</p> <p>3 THE WITNESS: We accepted complaints 4 filed by, for example, transgender students, 5 for -- for example, access to facilities in 6 schools, under the Obama administration. That 7 was certainly one of the first areas that we 8 moved into. We accepted those complaints 9 under -- under the rubric of sex.</p> <p>10 As you may know, that was -- that 11 policy was rescinded at the beginning of the 12 Trump administration, and we are now accepting 13 those complaints again.</p> <p>14 BY MR. SOUTHWICK</p> <p>15 Q But there was a period roughly between 16 2017 and 2020 where complaints relating to access 17 to restrooms or housing, locker rooms, for 18 transgender students would not have been accepted 19 within the subject matter jurisdiction of OCR; is 20 that right?</p> <p>21 MS. SNYDER: Again, objection. You're 22 outside the topics on the 30(b)(6) notice.</p>
<p>Page 98</p> <p>1 areas, we would accept jurisdiction because of 2 the interpretation of Bosworth [sic] under -- 3 under Title IX, prohibition against sex 4 discrimination, for sexual orientation gender 5 identity complaints.</p> <p>6 But in the harassment context, we -- 7 that -- we've for some time dealt with LGBTQ 8 issues.</p> <p>9 BY MR. SOUTHWICK</p> <p>10 Q And just to clarify, are you referring 11 to the Supreme Court decision from 2020, the 12 Bostock decision?</p> <p>13 A Yes.</p> <p>14 Q So prior to the Bostock decision, the 15 Office of Civil Rights would not accept a 16 complaint of discrimination based on sexual 17 orientation or gender identity under Title IX 18 unless it had to do with harassment or that -- 19 that sort of a thing?</p> <p>20 MS. SNYDER: Again, objection. You're 21 outside the topics for the 30(b)(6) deposition.</p> <p>22 But if -- if you know the answer in</p>	<p>1 But if you know -- if you know, you can 2 answer in your personal capacity.</p> <p>3 THE WITNESS: In my personal 4 recollection, that is correct.</p> <p>5 BY MR. SOUTHWICK</p> <p>6 Q What about with respect to a student 7 denied admission or expelled because of a 8 same-sex marriage during the Trump 9 administration? Would the Office of Civil Rights 10 have accepted a complaint within its subject 11 matter jurisdiction on that basis?</p> <p>12 MS. SNYDER: Again, objection. You're 13 outside the topics of the 30(b)(6) deposition.</p> <p>14 If you know, you can answer in your 15 personal capacity.</p> <p>16 THE WITNESS: I can answer only 17 according to my personal belief, and my belief is 18 that the -- under those circumstances, that 19 administration would not have accepted that 20 complaint for processing.</p> <p>21 BY MR. SOUTHWICK</p> <p>22 Q In making waiver decisions, will the</p>

<p>1 Office of Civil Rights consider the fact that 2 students who experienced gender identity or 3 sexual orientation discrimination that was not 4 within the subject matter jurisdiction of OCR 5 during the Trump administration -- will it 6 consider those as a factor in making a timeliness 7 decision or a waiver decision?</p> <p>8 MS. SNYDER: Objection. Again, outside 9 the topics of the 30(b)(6) deposition.</p> <p>10 If you know, you can answer in your 11 personal capacity.</p> <p>12 THE WITNESS: The question is -- it's a 13 hypothetical one that's so fact specific --</p> <p>14 MS. SNYDER: And I'm sorry.</p> <p>15 THE WITNESS: -- and --</p> <p>16 MS. SNYDER: Let me -- let me just 17 finish. It's also speculative and ambiguous.</p> <p>18 But, again, you can answer in your 19 personal capacity if you're able.</p> <p>20 THE WITNESS: I'm actually not able to 21 answer that in my personal capacity. I don't -- 22 I don't know, and I won't speculate as to how</p>	<p>1 granted in any of the cases listed on Exhibit 2?</p> <p>2 MS. SNYDER: Objection. You're asking 3 a speculative question, and it's also outside the 4 scope of the 30(b)(6) deposition.</p> <p>5 It's also potentially deliberative, and 6 as a result, you know, to the extent he has 7 non-privileged information in his personal 8 capacity, he can answer the question in that 9 capacity, leaving out any privileged information.</p> <p>10 BY MR. SOUTHWICK</p> <p>11 Q Mr. -- Mr. Wills -- Mr. Wills, you are 12 here to testify today on behalf of the Department 13 of Education, and one of the topics is the status 14 of the complaints listed on Exhibit 2. And so 15 what I'm trying to get an understanding of is 16 when are we going to find out whether timeliness 17 waivers are going to be granted for any of the 18 complaints on Exhibit 2.</p> <p>19 Can you answer that question?</p> <p>20 A That's a different question. That 21 question was when, and the prior question was 22 whether.</p>
<p>Page 102</p> <p>1 that particular factual situation that you 2 hypothesized would be dealt with in a -- in a 3 waiver context.</p> <p>4 BY MR. SOUTHWICK</p> <p>5 Q But don't we have those exact issues in 6 front of the Office of Civil Rights right now in 7 multiple complaints that are on Exhibit 2?</p> <p>8 MS. SNYDER: Objection. Again, you're 9 outside the topics of the 30(b)(6) deposition.</p> <p>10 If you know, you can answer in your 11 personal capacity.</p> <p>12 THE WITNESS: I'd just note that all of 13 those complaints are pending and in process, and 14 I really cannot speculate as to what the result 15 of that process will be.</p> <p>16 BY MR. SOUTHWICK</p> <p>17 Q Has the headquarters group been 18 approached regarding any of the complaints listed 19 in Exhibit 2 with respect to waiver or timeliness 20 issues?</p> <p>21 A No, we have not.</p> <p>22 Q Do you know whether a waiver will be</p>	<p>Page 104</p> <p>1 I can't answer that question because we 2 are in process, and the process needs to move to 3 its conclusion. There will be -- there will be a 4 determination made. I cannot tell you when that 5 will be. That calls for speculation on my part 6 that I simply can't make.</p> <p>7 The process is right now at the 8 regional office level. There are -- regional 9 office level. There will have to be a 10 recommendation from an investigative staff member 11 that is approved, ultimately, by the director of 12 that office to go forward.</p> <p>13 It will make its way -- it will go to 14 the headquarters group, and, you know, we'll 15 review the determination, the proposed 16 determination, and make a decision at that point.</p> <p>17 But I cannot tell you when that will be 18 or whether -- or what the determination will be. 19 Each one is fact specific. We will be looking 20 closely at whatever facts are adduced to support 21 the waiver and make the best decision --</p> <p>22 Q Have any --</p>

<p>1 A I'm sorry.</p> <p>2 Q Have any recommendations been made with 3 respect to waivers for any of the complaints 4 listed in Exhibit 2?</p> <p>5 A The headquarters --</p> <p>6 MS. SNYDER: Objection.</p> <p>7 THE WITNESS: Sorry.</p> <p>8 MS. SNYDER: Vague.</p> <p>9 THE WITNESS: The headquarters group 10 has not received any recommendations. I do not 11 know whether recommendations have been made yet 12 within the regional offices.</p> <p>13 BY MR. SOUTHWICK</p> <p>14 Q And who would know that information?</p> <p>15 A I would consult first with Melanie 16 Velez. I suspect she may not even have that 17 information, but she -- she would be the person 18 who would reach out to the offices to make that 19 request.</p> <p>20 Q Putting the waiver issue aside -- so 21 I'm not going to be asking this question about 22 waiver, but it still is about timeliness -- have</p>	<p>1 personal capacity.</p> <p>2 THE WITNESS: In my personal capacity, 3 that -- that information, if it is available, 4 if -- if a recommendation has been made at the 5 regional office level regarding timeliness, the 6 regional office director would -- would be aware 7 of that. I am not. The headquarters group is 8 not.</p> <p>9 BY MR. SOUTHWICK</p> <p>10 Q Did you speak with any regional office 11 directors in preparation for your deposition 12 today?</p> <p>13 A I did not.</p> <p>14 Q Why not?</p> <p>15 MS. SNYDER: Objection.</p> <p>16 THE WITNESS: I'm sorry to keep -- I'm 17 sorry --</p> <p>18 MS. SNYDER: Sorry. Objection. I feel 19 like you might be asking privileged information. 20 Can we take a break to consider that, please, 21 before he answers?</p> <p>22 MR. SOUTHWICK: Sure. It's fine with</p>
<p>Page 106</p> <p>1 any timeliness recommendations been made by OCR 2 staff with respect to any of the complaints 3 listed in Exhibit 2?</p> <p>4 MS. SNYDER: Objection. I believe 5 you're outside the scope of the 30(b)(6) 6 deposition. Moreover, the question is ambiguous.</p> <p>7 If -- if you know, you can answer in 8 your personal capacity.</p> <p>9 THE WITNESS: Based on my personal 10 knowledge, no. Headquarters -- the headquarters 11 group has not -- has not yet received any 12 recommendations regarding timeliness.</p> <p>13 BY MR. SOUTHWICK</p> <p>14 Q And so who would have that knowledge 15 about timeliness recommendations regarding these 16 complaints?</p> <p>17 MS. SNYDER: Again, objection. The 18 question is vague, calls for speculation, and is 19 outside the scope of the 30(b)(6) topics.</p> <p>20 If you know the answer, you can answer 21 in your professional capacity -- or excuse me. 22 If you know the answer, you can answer in your</p>	<p>1 me.</p> <p>2 VIDEO TECHNICIAN: We are going off the 3 record at -- are we going off the record, 4 Counsel? Sorry.</p> <p>5 MR. SOUTHWICK: Yeah, it's okay.</p> <p>6 VIDEO TECHNICIAN: Thank you.</p> <p>7 MR. SOUTHWICK: We can go off the 8 record.</p> <p>9 VIDEO TECHNICIAN: We are going off the 10 record at 12:24.</p> <p>11 (Recess 12:24 p.m. to 12:35 p.m.)</p> <p>12 VIDEO TECHNICIAN: We are back on the 13 record, and the time is 12:35. Please proceed.</p> <p>14 BY MR. SOUTHWICK</p> <p>15 Q Mr. Wills, you took a break at the 16 request of counsel. Are you prepared to answer 17 the question that was pending right before the 18 break?</p> <p>19 MS. SNYDER: So I believe the question 20 was why didn't he consult with somebody during 21 the prep, and we are going to object to that 22 question. We believe it calls for potentially</p>

1 privileged information in the form of  
2 attorney-client privilege or possibly attorney  
3 work product, and as a result, we're going to  
4 advise him not to answer.

5 BY MR. SOUTHWICK

6 Q So, Mr. Wills, I don't want to know any  
7 attorney-client privileged communications. I'm  
8 not asking about that. Outside of anything  
9 that's attorney-client privileged, can you  
10 respond to my question as, you know, why didn't  
11 you prepare by talking to regional directors if  
12 so much of this information is available from the  
13 regional directors?

14 MS. SNYDER: Again, I'm going to  
15 object. I believe you're asking a question that  
16 calls for privileged information, potentially, or  
17 would be attorney work product, and I'm going to  
18 advise him not to answer.

19 BY MR. SOUTHWICK

20 Q Are you going to follow that  
21 instruction, Mr. Wills?

22 A I'm going to follow that instruction,

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1 Similarly, I believe you're outside the topics of  
2 the 30(b)(6). If you know the answer, you can  
3 answer in your personal capacity.

4 THE WITNESS: In my personal capacity,  
5 that is not -- I'm not understanding yet what  
6 your term unusual means, but in my understanding,  
7 that is not unusual. There are any number of  
8 complaints that are in evaluation for at least  
9 that period of time, hence the average being 72.  
10 We have many thousands of complaints.

11 BY MR. SOUTHWICK

12 Q But you would expect that, you know,  
13 approximately 80 percent of these would have a  
14 conclusion to the evaluation stage within the  
15 180-day time frame; is that correct?

16 A That is the goal that's -- we are  
17 always striving to meet, yes. That's the first  
18 GPRA goal.

19 Q Mr. Wills, are you aware that certain  
20 regional offices began scheduling interviews with  
21 several of the complainants earlier in the  
22 summer, but then canceled those interviews,

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1 Mr. Southwick.

2 Q Mr. Wills, would you expect the OCR  
3 80 percent within 180 days standard or goal that  
4 we've been discussing -- would you expect that to  
5 apply to the complaints that are listed on  
6 Exhibit No. 2?

7 A Yes. It applies to all of our  
8 complaints.

9 Q So it looks to me like most of the  
10 complaints that are listed on Exhibit 1 -- excuse  
11 me -- Exhibit 2, the chart, that the vast  
12 majority of these were filed in late July.

13 There's a couple that are outside of  
14 that time frame, but by in large, we're looking  
15 at late July. And so we're -- we're three months  
16 in, I think, July, August, September, October.  
17 So, yeah, we're about three months out from most  
18 of these complaints, and timeliness  
19 determinations have not been made with respect to  
20 any of them.

21 Is that unusual?

22 MS. SNYDER: Objection. Vague.

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1 canceled or postponed them? Are you aware of  
2 that?

3 A I am aware of that.

4 Q Do you know why that occurred?

5 A I'm sorry, sir. I didn't understand  
6 the question. Could you repeat it?

7 Q Do you know why that occurred, why the  
8 cancellations and postponements?

9 A Yes, I do. It was born of the fact  
10 that we had received a number of complaints  
11 raising very similar issues against what might be  
12 religious institutions. A number of regional  
13 offices had informed their appropriate  
14 enforcement director, who's a headquarters staff  
15 member, that these complaints were coming in,  
16 and, indeed, we now have the 36 that we have.

17 But as a result of a number of these  
18 complaints coming in, some of them simultaneously  
19 to a variety of regional offices, we wanted to be  
20 sure that the regional offices would respond  
21 consistently and that we were handling these  
22 cases -- and they're not identical cases, but

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29 (Pages 110 - 113)

1 they're raising very similar issues. We wanted  
2 to be sure that we handled these cases -- we  
3 approached the handling and evaluation and  
4 investigation of these cases consistently.

5 That is something we have done in other  
6 situations involving other types of cases where  
7 we have multiple filings coming into an office  
8 either from a single filer or from a couple of  
9 filers, but they're raising identical issues and  
10 it's clear that the -- or it appears to be clear  
11 that the cases are related. We have consistently  
12 developed approaches to how we're going to deal  
13 with those cases going forward. We did that in  
14 this case as well.

15 And while we were trying to move  
16 forward appropriately and prudently, we paused  
17 that -- those interviews in those regional  
18 offices that had already been set up, and we  
19 said, pull back from those, we will get back to  
20 you once we have made a determination that we are  
21 going to move forward.

22 We have since made that determination

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1 in your personal capacity.

2 THE WITNESS: While an investigation --  
3 an evaluation and investigation is ongoing, those  
4 notes are not generally available pursuant to a  
5 FOIA request.

6 BY MR. SOUTHWICK

7 Q However, they become available at the  
8 conclusion of an investigation?

9 MS. SNYDER: Again, objection. It's  
10 outside the three topics in the deposition  
11 notice. If you know, you can answer in your  
12 personal capacity.

13 THE WITNESS: I would have to  
14 consult -- in my personal capacity, I would have  
15 to consult with our FOIA personnel before I could  
16 answer that question.

17 BY MR. SOUTHWICK

18 Q So it looks like a number of interviews  
19 are now being scheduled with respect to several  
20 of the complaints listed on Exhibit 2.

21 What generally happens after that  
22 interview stage? You know, what happens next in  
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1 that we are going to move forward with interviews  
2 where the regional offices deem that an interview  
3 is necessary in order for us to have appropriate  
4 information to evaluate the complaint.

5 Q Have any of the educational  
6 institutions that are involved in the complaints  
7 listed on Exhibit 2 been contacted by OCR with  
8 respect to these complaints?

9 A I don't know. I don't believe so, but  
10 I don't know.

11 Q And who would know that information?

12 A The regional office where the  
13 complaints were filed.

14 Q And notes from interviews are required  
15 to be kept pursuant to the OCR Processing Manual;  
16 is that correct?

17 A That is correct.

18 Q And are those notes -- are those notes  
19 generally available through a FOIA request?

20 MS. SNYDER: Objection. Again, outside  
21 the three topics in the 30(b)(6) deposition.

22 If you know the answer, you can testify

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1 the evaluation process?

2 A Assuming during the interview stage the  
3 information that we needed to gather was obtained  
4 and there's no one else we need to -- we would  
5 need to reach out to and interview in order to  
6 gain access to information we needed, after that  
7 process, we would make -- we would propose the  
8 next step in the -- in the life of that  
9 particular case.

10 That might be a proposal to open the  
11 complaint for investigation. It might be  
12 proposal to dismiss a complaint for any number of  
13 the reasons that have been articulated -- have  
14 been set forth in the Case Processing Manual.  
15 That would normally be a next step.

16 But I want also to add that these are  
17 not steps that are mandated. You know, cases  
18 present with varying factual situations. That's  
19 the nature of the work we do. Next steps are --  
20 are -- are determined on a case-by-case basis.  
21 But that, generally speaking, is where we would  
22 be assuming we obtained enough information to

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30 (Pages 114 - 117)

1 move forward to our next step in the case, which  
2 would generally be an evaluation of should we  
3 dismiss, should we go forward.

4 Q Does OCR expect that at least some of  
5 the complaints listed on Exhibit 2 will require  
6 headquarters to make a religious exemption  
7 determination?

8 MS. SNYDER: Objection. Speculation.  
9 If you know, you can answer.

10 THE WITNESS: I do not know the answer  
11 to that the question whether -- whether some of  
12 these complaints will require headquarters to  
13 make a religious exemption assurance  
14 determination.

15 BY MR. SOUTHWICK

16 Q Then why did you create this new  
17 directive and this new process to address those?  
18 Didn't -- didn't you just say that you  
19 anticipated that happening?

20 A You asked whether any of these will.  
21 It's entirely possible that -- that some  
22 recipients will make those -- those requests for

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1 takes a minute. If -- Mr. Wills, do you have it  
2 in front of you, the --  
3 THE WITNESS: Not on the computer, but  
4 I have -- I have a hard copy.

5 MR. SOUTHWICK: Could you just show me  
6 the hard copy, just to make sure we're looking at  
7 the same thing? Gotcha. All right. That looks  
8 right. Thank you.

9 And, Counsel, let me know when it's  
10 loaded on your screen.

11 THE WITNESS: It's up. There we are.  
12 Yes, sir.

13 MR. SOUTHWICK: All right.

14 MR. DAVIS: This is --

15 MR. SOUTHWICK: It's up.

16 MR. DAVIS: Is this exhibit five pages?  
17 I'm sorry. That says --

18 MR. SOUTHWICK: Exhibit 5 should be 19

19 pages.

20 MR. DAVIS: Nineteen pages. Okay.

21 MS. SNYDER: I have 153 pages.

22 MR. DAVIS: Right.

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1 assurances, absolutely possible, but I don't know  
2 which ones will, if they will.

3 It's also possible that every single  
4 one of those recipient institutions may decide  
5 not to make a request. I don't know that. But  
6 in anticipation of that, we provided what we  
7 provided in a letter of notification.

8 Q I'd like to ask you about what happens  
9 after a dismissal based on a religious exemption  
10 has been decided by OCR.

11 And I'm going to turn to correspondence  
12 relating to George Fox University and Northwest  
13 Yearly Meeting of Friends that was produced last  
14 night, and I'm going to mark it as an exhibit  
15 here. I believe we're on Exhibit No. 5 now.

16 All right. I have now introduced what  
17 I have marked as Exhibit No. 5.

18 (Deposition Exhibit Number 5  
19 was marked for identification.)

20 MR. DAVIS: Mr. Southwick, it's still  
21 loading on our computer. My apologies.

22 MR. SOUTHWICK: All right. Yeah. It

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1 THE WITNESS: I have -- yeah.

2 MR. SOUTHWICK: For Exhibit 5 in the  
3 Exhibit Share?

4 MS. SNYDER: Yes.

5 MR. DAVIS: Maybe we can refer to the  
6 -- if I may make a suggestion to refer to pages  
7 by Bates number, because perhaps some of those  
8 documents are not on the Exhibit Share. I don't  
9 know if they're --

10 MS. SNYDER: No, they aren't.

11 MR. SOUTHWICK: I've only got the 19  
12 pages on Exhibit Share.

13 THE WITNESS: Nineteen --

14 MR. SOUTHWICK: You might be looking at  
15 the physical copy that had a whole bunch of other  
16 stuff in it. I'm introducing Exhibit No. 5 as  
17 the version that's the marked Exhibit No. 5 in  
18 Exhibit Share. For ease of reference, I will  
19 also refer to the Bates number.

20 THE WITNESS: Can we make this bigger?

21 Bigger, bigger, bigger, bigger. Let's see.

22 Enlarge. Okay.

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1 MR. SOUTHWICK: I'm looking at document  
2 ED4, zeros, ending in 1.  
3 THE WITNESS: Yes, that -- four zeros  
4 ending in 1 is the document -- the letter dated  
5 March 9th, 2015, Paul Southwick, referencing --  
6 MR. SOUTHWICK: Yes.  
7 THE WITNESS: -- George Fox University.  
8 BY MR. SOUTHWICK  
9 Q Yes. And this is a three-page letter.  
10 And did you review this correspondence in  
11 preparation for your deposition?  
12 A I did.  
13 Q And can you tell me what this letter  
14 is?  
15 A This is a letter directed to you  
16 regarding George Fox University that recites  
17 three conditions that OCR uses to determine  
18 whether a recipient is considered to be  
19 controlled by a religious organization and thus  
20 eligible for a Title IX exemption. It also  
21 recites those three conditions on page 2.  
22 And then it explains what the

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1 controlled by NWYM and the University's practices  
2 that you challenge in your complaint are not  
3 based on NWYM's religious tenets.  
4 It further states that because the  
5 allegations of your complaint fall within the  
6 exemption granted on May 23rd, 2014, and because  
7 your complaint has also alleged that the  
8 University practices about which you complained  
9 are not based on the religious tenets of a  
10 controlling religious organization, OCR will  
11 contact the religious organization identified by  
12 the University. If the organization provides an  
13 interpretation of tenets that has a different  
14 practical impact than that described by the  
15 University, or if the organization denies that it  
16 controls the University, the University's  
17 exemption will be rescinded and OCR Seattle will  
18 proceed with the processing of your original  
19 complaint allegation under a new docket number.  
20 We will inform you of the outcome of this  
21 process, contact information, signed by Seth  
22 Galanter, the then principal deputy assistant

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1 University claimed in a letter to OCR regarding  
2 its assertion that it's controlled by a religious  
3 organization. The University asserted the  
4 University is owned by Northwest Yearly Meeting  
5 of Friends and that the University's seven board  
6 of trustee members must be Friends.  
7 With regard to tenets, the University  
8 explained, as relevant to your complaint, that  
9 its biblical belief is that human beings are  
10 created male and female, and that the University,  
11 quote, cannot in good conscience support or  
12 encourage an individual to live in conflict with  
13 biblical principles. The University explained  
14 that, because of its tenets, it would be unable  
15 to accommodate a transgender student's request to  
16 use facilities or play on athletic teams  
17 consistent with that student's gender identity.  
18 On the basis of information contained in that  
19 letter, the Assistant Secretary granted an  
20 exemption in a letter dated May 23rd, 2014.  
21 It goes on to state that in your  
22 complaint, you alleged that the University is not

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1 secretary for OCR.  
2 Q Thank you, Mr. Wills. To clarify where  
3 we're at in this letter, is it fair to say that  
4 the Office of Civil Rights received a Title IX  
5 complaint from a transgender student against  
6 George Fox University and that those complaints  
7 have the reference numbers listed at the top of  
8 the first page?  
9 A That is correct.  
10 Q And it's further accurate that in  
11 response to an assurance of religious exemption,  
12 the Office of Civil Rights closed that  
13 transgender student's Title IX complaints? Is  
14 that accurate?  
15 A That is also accurate.  
16 Q And then this letter further states  
17 that because the student challenged whether or  
18 not George Fox was controlled by a religious  
19 organization that had religious tenets that would  
20 be inconsistent with compliance with Title IX,  
21 the Office of Civil Rights was going to go ahead  
22 and contact the controlling religious

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<p>1 organization, NWYM. Is that accurate?</p> <p>2 A That is accurate.</p> <p>3 Q And specifically that last paragraph on</p> <p>4 page 2, my question there -- you read it. It</p> <p>5 describes what they were going to do.</p> <p>6 Is this the current OCR policy as well</p> <p>7 for when a complainant challenges the conclusion</p> <p>8 that an educational institution is controlled by</p> <p>9 a religious organization with contrary religious</p> <p>10 tenets?</p> <p>11 MS. SNYDER: Objection. You've assumed</p> <p>12 facts that aren't in evidence, and the question's</p> <p>13 ambiguous.</p> <p>14 THE WITNESS: Should I --</p> <p>15 MS. SNYDER: You can answer.</p> <p>16 BY MR. SOUTHWICK</p> <p>17 Q You're still required to respond.</p> <p>18 A My -- my -- based on my personal</p> <p>19 knowledge, that is --</p> <p>20 MS. SNYDER: No, no. You can answer.</p> <p>21 THE WITNESS: Oh, I can answer.</p> <p>22 Yes, it is.</p>	<p>1 There's the assistant secretary, obviously a</p> <p>2 political appointee, a principal deputy assistant</p> <p>3 secretary, also a political appointee, who would</p> <p>4 oversee -- for example, if we had a principal</p> <p>5 deputy assistant secretary now, that person would</p> <p>6 be my boss.</p> <p>7 Q But that -- that position is currently</p> <p>8 vacant; is that right?</p> <p>9 A Yes.</p> <p>10 Q Okay. We can go to the -- page 4 of</p> <p>11 Exhibit 5, which starts on ED4.00004.</p> <p>12 Do you see that letter dated March 9th,</p> <p>13 2015?</p> <p>14 A Yes, I do.</p> <p>15 Q All right. It's a somewhat lengthy</p> <p>16 letter, so I'm not going to ask you to read the</p> <p>17 whole thing, but could you describe in general</p> <p>18 what the -- what this letter is?</p> <p>19 A In general, this is a letter to the</p> <p>20 superintendent of the Northwest Yearly Meeting of</p> <p>21 Friends inquiring as to -- it recites the history</p> <p>22 of the complaint and the fact that there was a</p>
<p>Page 126</p> <p>1 BY MR. SOUTHWICK</p> <p>2 Q To your knowledge, other than this</p> <p>3 situation with George Fox University, has OCR</p> <p>4 gone through this process with respect to any</p> <p>5 other complaints involving a religious exemption</p> <p>6 within the time period of 2013 to the present?</p> <p>7 MS. SNYDER: Objection. Vague.</p> <p>8 THE WITNESS: To my knowledge, OCR has</p> <p>9 not gone through this -- a process similar to</p> <p>10 what it went through with George Fox University</p> <p>11 by contacting a religious organization, to my</p> <p>12 knowledge.</p> <p>13 BY MR. SOUTHWICK</p> <p>14 Q On page 3, the letter was issued by</p> <p>15 Seth Galanter, principal deputy assistant</p> <p>16 secretary.</p> <p>17 Can you tell me what the position of</p> <p>18 principal deputy assistant secretary for OCR --</p> <p>19 what does that position mean?</p> <p>20 A The principal deputy assistant</p> <p>21 secretary is a political appointee. He or she is</p> <p>22 second in command, so to speak, of -- of OCR.</p>	<p>Page 128</p> <p>1 question raised regarding the control issue with</p> <p>2 regard to this organization. And so it's a</p> <p>3 letter requesting information regarding control</p> <p>4 that NY -- NWYM has of the university and</p> <p>5 specific religious -- and also for information</p> <p>6 concerning specific religious tenets that were</p> <p>7 asserted in the original case, certainly in the</p> <p>8 original request for assurance of religious</p> <p>9 exemption.</p> <p>10 Q And so this letter reflects the Office</p> <p>11 of Civil Rights contacting the denomination that</p> <p>12 allegedly controlled George Fox University; is</p> <p>13 that accurate?</p> <p>14 A That is accurate.</p> <p>15 Q And to your knowledge, has OCR engaged</p> <p>16 in this process or sent a similar letter on any</p> <p>17 other occasion?</p> <p>18 A To my knowledge, OCR has not engaged in</p> <p>19 this -- in a similar process or sent a similar</p> <p>20 letter.</p> <p>21 Q And then if we could continue on. Page</p> <p>22 7 of Exhibit 5, it starts at ED4.00007, dated</p>

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33 (Pages 126 - 129)

1 March 25th, 2015. This appears to be a  
2 five-page -- or actually longer -- nine-page  
3 correspondence between the superintendent of  
4 Northwest Yearly Meeting and Seth Galanter,  
5 Office of Civil Rights.

6 You reviewed this correspondence in  
7 preparation for your deposition; is that right?

8 A Yes, I did.

9 Q And can you explain in general what  
10 this letter is?

11 A Yes, I can. In general, this is a --  
12 pardon me for a second. Scroll up.

13 In general, this is a response to  
14 Mr. Galanter's prior request concerning  
15 information -- more information about control and  
16 religious tenets with regard to the George Fox  
17 University, this -- this instant response by the  
18 Northwest Yearly Meeting of Friends providing the  
19 information requested in Mr. Galanter's prior  
20 letter.

21 Q And then, finally, starting on page 16  
22 of Exhibit 5, there is a final correspondence.

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1 my colleagues to -- to nail that down in terms of  
2 dates, but -- or there may be another reason for  
3 it. I don't know whether she was unavailable to  
4 make the request for information letter. She may  
5 have asked her principal to do that. It may have  
6 had nothing to do with her confirmation. So I  
7 don't know is my answer.

8 Q The series of correspondence that we've  
9 looked at, it discusses a standard for the  
10 control test to determine whether or not an  
11 educational institution is controlled by a  
12 religious organization, and it -- you know, OCR  
13 explains the test there, and Northwest Yearly  
14 Meeting of Friends provides information in  
15 response to that test.

16 Can you tell me what the current  
17 control test is that the Office of Civil Rights  
18 uses to determine whether or not an educational  
19 institution is controlled by a religious  
20 organization?

21 A Yes. The current -- the current  
22 control test is set forth at 34 C.F.R. section

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1 And could you -- dated August 19th, 2015, from  
2 Catherine Lhamon to Becky Ankeny.

3 Can you describe what this  
4 correspondence is?

5 A Yes. This is correspondence to the  
6 Northwest Yearly Meeting of Friends that based on  
7 the information that the Northwest Yearly Meeting  
8 of Friends provided in response to Mr. Galanter's  
9 request, this is the assistant secretary's  
10 granting of an assurance of exemption, a  
11 religious exemption, based on that information.

12 Q And do you know why this letter  
13 ultimately came from Ms. Lhamon rather than  
14 Mr. Galanter?

15 A I'm hesitating because I'm looking at  
16 the date.

17 I believe this is because -- I'm not  
18 sure when -- when Catherine Lhamon was confirmed  
19 as assistant secretary. It may have been because  
20 she had just -- several months prior to being  
21 confirmed, but I don't know -- I don't know that  
22 for a fact. I would have to consult a variety of

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1 106.12. It became effective November 23rd, 2020.  
2 And it's in our binder.

3 Q And do you have an understanding of why  
4 the control test changed?

5 MS. SNYDER: Objection. Assumes  
6 something that's not in evidence.

7 THE WITNESS: Based on my personal -- I  
8 would refer you to the comment and discussion  
9 after the rule, where all of the rationale --  
10 well, first of all, all the comments, both  
11 positive and negative, regarding any change were  
12 set forth and where the Department set forth its  
13 discussion and rationale for whatever decision it  
14 made vis-à-vis the new -- this regulation.

15 BY MR. SOUTHWICK

16 Q Is the Department currently considering  
17 changing those regulations again?

18 MS. SNYDER: Objection. That's outside  
19 the scope of the 30(b)(6) notice, and it's  
20 speculative.

21 If you know the answer in your personal  
22 capacity, you can answer in that capacity.

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1 THE WITNESS: I do not know the answer  
2 in my personal capacity.

3 BY MR. SOUTHWICK

4 Q To receive the benefit of the religious  
5 exemption, the educational institution must meet  
6 the control test, but is also required to  
7 identify its religious tenets that would conflict  
8 with compliance with Title IX; is that correct?

9 A That's correct.

10 Q So I was asking you about the control  
11 test part. Now I'm going to ask you about the  
12 second part, which is the contrary religious  
13 tenets.

14 How does OCR determine whether or not a  
15 controlling religious organization's religious  
16 tenets would conflict with compliance with Title  
17 IX?

18 A To answer that question, I will refer  
19 you to a long-standing process in OCR articulated  
20 first in earlier memorandum and guidance to OCR.  
21 Bear with me. That was first set forth on  
22 February 19th, 1985, by Harry Singleton, who was

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1 questioning at that level of the religious tenets  
2 articulated by an organization. That deference,  
3 if you will, or leniency has been historically  
4 how OCR has addressed that particular issue.  
5 That hasn't changed over the years, to my  
6 knowledge, and I've seen no evidence of that.

7 Q Is -- this policy which you've just  
8 read from in ED2.000048, is that codified in any  
9 regulations governing OCR?

10 A Not to my knowledge.

11 Q So it's informal, internal guidance?

12 MS. SNYDER: Objection. It's off topic  
13 and -- from the 30(b)(6) notice and potentially  
14 calls for a legal conclusion.

15 But if -- if you haven't -- if you --  
16 if you know in your personal capacity, you can  
17 answer in that capacity.

18 THE WITNESS: I would characterize it  
19 as OCR's practice, so...

20 BY MR. SOUTHWICK

21 Q Other than -- and so is your testimony  
22 that OCR continues to follow this guidance as

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1 the assistant secretary for civil rights at the  
2 time. This memorandum is included in your  
3 binder.

4 This -- the subject of the memorandum  
5 is Policy Guidance for Resolving Religious  
6 Exemption Requests. And I'm going to refer you  
7 to Bates page 048 under the subheading of tenets,  
8 which sets forth the direction given by the  
9 assistant secretary to field staff for addressing  
10 that issue.

11 And I'll just share what's written  
12 here. OCR cannot question what institution  
13 representatives claim as their beliefs. Only  
14 where one tenet clearly contradicts another could  
15 OCR question the institution policies based on  
16 those contradictory tenets.

17 And, remember, this is in the context  
18 of addressing a complaint that's been filed with  
19 OCR alleging discrimination by a religious  
20 institution.

21 The guidance -- the basic guidance here  
22 is that OCR is not to question -- engage in a

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1 indicated in this memorandum, the Singleton  
2 memorandum from 1985? Is it OCR's current  
3 practice to follow this guidance?

4 A I'm sorry. Could you repeat that?

5 Q Is it OCR's current practice that it  
6 will follow this guidance from the 1985 Singleton  
7 memorandum regarding religious tenets?

8 A With regard to the principles that are  
9 set forth here, yes, it will and has.

10 Q But, ultimately, OCR will make the  
11 final determination on whether or not there are  
12 contrary religious tenets that excuse compliance  
13 with Title IX; is that accurate?

14 A That is accurate.

15 Q And that will be made by the assistant  
16 secretary for OCR; is that right?

17 A That's correct. That would be elevated  
18 to the assistant secretary's level.

19 Q In the document that we're looking at,  
20 where it talks about unless one tenet clearly  
21 contradicts another, what does that mean?

22 A I don't know what -- what the author of

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1 this document had in mind by that, and I haven't  
2 taken time to imagine what contradictory  
3 religious tenets might look like. So I can't  
4 answer that question what does that mean.

5 Q There's a statement at the end of the  
6 paragraph: Under no circumstances should OCR  
7 appear to be interpreting the Bible.

8 Could you explain your understanding of  
9 that?

10 A Again, I don't know what was in the  
11 mind of the author of the document, but just  
12 looking at the words just recited there, it's a  
13 caution to OCR not to engage in theological  
14 speculation or reach theological conclusions, and  
15 that would include interpreting verses that a  
16 recipient might put forward as evidence of a  
17 religious tenet or religious belief. It's --  
18 it's very cautionary language, obviously, and, I  
19 believe, point of concern for excess  
20 entanglement.

21 Q And if you look at the second  
22 paragraph, though, it's talking about whether a

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1 status of students and employees. Section as  
2 noted above. Since the prohibitions in these  
3 sections are so specific, for all other sections  
4 of the regulation, which are more complex, you  
5 should require that the institutions be more  
6 specific than to simply claim Christian or  
7 biblical morals as tenets.

8 Q And the statement that you just read  
9 there, is that consistent with OCR's current  
10 policy and practice on this issue?

11 A I don't have any examples that I can  
12 offer you of where that's been used, but it -- to  
13 my understanding, it is still consistent with  
14 OCR's -- or OCR's practice is consistent with  
15 what's stated here.

16 Q And then could you read the third  
17 paragraph under the tenet section?

18 A Yes. In granting an exemption, OCR may  
19 reserve its authority by stating that the  
20 exemption is limited to the extent that  
21 compliance with the Title IX regulation conflicts  
22 with the religious tenets followed by the

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1 general assertion of biblical or Christian  
2 principles would be sufficient to excuse  
3 compliance.

4 Could you read that second paragraph  
5 for me there from the tenet section?

6 A Sure. Unfortunately, many institutions  
7 have not been so clear regarding the tenets of  
8 the religious organization as to quote sections  
9 of the Bible. For example, many institutions  
10 have requested exemption from the marital and  
11 parental status sections of the regulation,  
12 106.21(c) 106.40, 106.57 and 106.60. Several of  
13 these institutions state that only these  
14 sections -- only -- pardon me.

15 Several of these institutions state  
16 only that these sections prevent them from  
17 screening students and employees whose behavior  
18 is not in accordance with the, quote, Christian,  
19 unquote, or, quote, biblical morals, unquote,  
20 followed by the institution. You should accept  
21 these very general tenets for those sections of  
22 the regulation regarding marital and parental

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1 institution. See Tab C, form letter 2, paragraph  
2 2. Excuse me. This permits a potential  
3 complainant an opportunity to dispute those  
4 tenets, at which time OCR may contact the  
5 appropriate religious organization for an  
6 explanation of the practical application of the  
7 tenets.

8 Q And that's what happened with respect  
9 to the George Fox complaint and Northwest Yearly  
10 Meeting of Friends; is that accurate?

11 A Yes. That is precisely what happened  
12 with regard to the George Fox University issues.

13 Q In enforcing Title IX, OCR enforces not  
14 just the statute, but the implementing  
15 regulations; is that correct?

16 A That is --

17 Q And those --

18 A -- correct.

19 Q And those concern a number of areas,  
20 housing, admissions, sexual assault and  
21 harassment and a variety of other regulations; is  
22 that accurate?

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1 A That's accurate.  
2 Q And is it OCR's understanding that an  
3 educational institution can claim a religious  
4 exemption to any of those implementing  
5 regulations?

6 A Yes. It's OCR's understanding that a  
7 religious institution can claim an exemption to  
8 any of those, yes.

9 Q And that would include an educational  
10 institution being allowed to claim a religious  
11 exemption relating to the retaliation  
12 regulations; is that correct?

13 A That is correct. It could claim an  
14 exemption relating to the retaliation.

15 Q And in that case, the Office of Civil  
16 Rights would not provide protections for a  
17 student who had been retaliated against for  
18 filing a Title IX complaint; is that correct?

19 A That would be the case only if OCR --  
20 it's an assurance of -- of -- an exemption from  
21 that particular provision. The claim is not --  
22 you can claim whatever you want to claim. You

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1 according to the Department in its discussion  
2 following the rule, so, likewise -- but the claim  
3 certainly could be made.

4 Q But if an educational institution  
5 asserted a religious exemption claiming something  
6 along the lines of these allegations or  
7 retaliation are actually a form of biblical  
8 discipline that we've imposed on a student, and  
9 in exercise of biblical discipline, we're  
10 requesting a religious exemption from the  
11 retaliation provisions, wouldn't the Office of  
12 Civil Rights have to abide by the exhortation of  
13 the policy guidance from the Singleton memo and  
14 defer to the religious educational institution  
15 on -- on that point?

16 MS. SNYDER: Objection. Your question  
17 is -- calls for speculation, is vague. I -- I  
18 believe it's also off the three topics that we've  
19 agreed to for the 30(b)(6) deposition.

20 With those objections in mind, if -- if  
21 you know the answer, you can answer in your  
22 personal capacity.

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1 can claim an exemption to any portion of this.  
2 OCR -- I believe you'll see in the -- and have  
3 seen in the -- in the -- in the comment and  
4 discussions to both rules, you'll see that  
5 there -- you know, that issue was raised. I  
6 believe the response by the Department at that  
7 time was it is skeptical about the viability of  
8 such a claim. There's no indication that such a  
9 claim has ever been made.

10 But, again, I want to draw a  
11 distinction between yes, you can -- you can  
12 assert a claim and you will receive an assurance.  
13 That's a very different discussion. So while you  
14 can make that claim, I -- again, as -- as the  
15 Department expressed, it is skeptical as to the  
16 viability of such a claim.

17 Likewise, asserting -- making a claim  
18 for exemption from institution -- recipient  
19 institution's obligations under Title IX.  
20 There's a Title IX regarding sexual harassment or  
21 sex-based discrimination. No such complaint --  
22 no such claim has ever been made, at least

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1 THE WITNESS: I do not know the answer  
2 because that causes me to speculate on something,  
3 and these -- these situations are very fact  
4 specific. I -- I can't speculate as to what  
5 OCR's determination would be under those  
6 circumstances.

7 BY MR. SOUTHWICK

8 Q So in Exhibit 2, you know, we have the  
9 complaints of many of the plaintiffs. That's the  
10 chart of complaints. And several of these  
11 complainants are current students, and several of  
12 the current students are concerned about  
13 retaliation from their educational institutions  
14 because they have filed these complaints.

15 As the Office of Civil Rights  
16 representative, can you assure them that your  
17 office will protect them from retaliation in  
18 response to the filing of these Title IX  
19 complaints in Exhibit 2?

20 A OCR can assure them that if they  
21 believe they are being retaliated against or were  
22 retaliated against that they can file a complaint

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1 with OCR alleging that retaliation and that OCR  
2 will evaluate and, if appropriate, investigate  
3 and resolve that complaint.

4 Q And could also dismiss that complaint  
5 on the basis of the religious exemption if such  
6 an exemption was raised and applied; is that  
7 correct?

8 MS. SNYDER: Object -- objection.  
9 Speculation.

10 THE WITNESS: Yeah. I -- I can't  
11 answer that. It's really calling for speculation  
12 that I can't engage in at that point.

13 But I -- I do want to emphasize that --  
14 that if a student is retaliated against or has  
15 been retaliated against, they have that option  
16 and would -- I would recommend -- urge them to  
17 exercise it, to file a complaint of retaliation.

18 MS. SNYDER: Paul?

19 MR. SOUTHWICK: Yes.

20 MS. SNYDER: Yeah. Sorry. It's about  
21 1:30 here. I'm just wondering -- I don't want  
22 to him to fade away on us, so -- it's past our

1 us two minutes. Thank you. Off the record.

2 MR. SOUTHWICK: Yeah, we can go off the  
3 record.

4 VIDEO TECHNICIAN: Thank you. We are  
5 going off the record at 1:23.  
6 (Whereupon, at 1:23 p.m., a  
7 luncheon recess was taken.)

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1 lunchtime. So I'm just wondering kind of what  
2 your -- what your schedule is and when you  
3 anticipate taking a lunch break.

4 MR. SOUTHWICK: I couldn't hear the  
5 last part, but if you'd like to take a lunch  
6 break now, that is fine with me.

7 MS. SNYDER: No. Sorry. I'll try --  
8 I'll try this. Maybe you can hear this way. I  
9 said it's about 1:30. It's a little -- it's  
10 almost 1:30 here, and I just want to make sure  
11 that he has something to eat for lunch. It  
12 doesn't have to be this minute if you're in the  
13 middle of some questions, but I was wondering  
14 what your schedule is.

15 MR. SOUTHWICK: Yeah, we can take a  
16 lunch break now. How long do you think you'll  
17 need for a lunch break?

18 MS. SNYDER: Hold on for -- just give  
19 us a minute.

20 VIDEO TECHNICIAN: Counsel, would you  
21 like to go off the record at this time?

22 MS. SNYDER: Sorry. Yeah. Just give

1 A F T E R N O O N S E S S I O N

2 (2:14 p.m.)

3 VIDEO TECHNICIAN: We are back on the  
4 record. The time is 2:14. Please proceed.

5 WHEREUPON,

6 RANDOLPH WILLS

7 was called for continued examination, and having  
8 been previously duly sworn, was examined and  
9 testified further as follows:

10 EXAMINATION BY COUNSEL FOR PLAINTIFFS

11 CONTINUED

12 BY MR. SOUTHWICK

13 Q Mr. Wills, has OCR ever evaluated the  
14 impact of the religious exemption to Title IX,  
15 the impact of that on LGBTQ students at  
16 educational institutions receiving federal  
17 financial assistance?

18 MS. SNYDER: Objection. That is  
19 outside the scope of the three deposition topics.

20 If you know, you can answer in your  
21 personal capacity.

22 THE WITNESS: In my personal capacity,

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<p>1 not to my knowledge would be my response. 2 BY MR. SOUTHWICK 3 Q Has OCR ever been presented with 4 information regarding the negative impact of the 5 religious exemption on LGBTQ students? 6 MS. SNYDER: Again, objection. That's 7 outside the scope of the 30(b)(6) topics. But if 8 you know, you can answer in your personal 9 capacity. 10 THE WITNESS: In my personal capacity, 11 I know that information was provided through the 12 comments, all of which are included in the 13 binder. 14 BY MR. SOUTHWICK 15 Q And when you say comments, you're 16 referring to comments submitted during the 2020 17 rulemakings? 18 A That's correct. Yes. 19 Q Were you involved in the evaluation of 20 those comments? 21 A I was -- 22 MS. SNYDER: Objection. Outside the</p>	<p>1 made a request that was unnecessary because their 2 particular situation was covered by another 3 provision in -- in Title IX in the regulation. I 4 don't know whether I would qualify those as 5 denials, but I'm given to understand that that 6 has happened in the past. 7 BY MR. SOUTHWICK 8 Q Are there any other circumstances under 9 which -- under which an assurance did not issue 10 other than those that you just described? 11 MS. SNYDER: Again, objection. Outside 12 the topics for the 30(b)(6). 13 But if you know in your personal 14 capacity, you can answer in that capacity. 15 THE WITNESS: I am not aware of any 16 other circumstances under which an exemption did 17 not issue or an assurance did not issue with 18 regard to a religious exemption. 19 BY MR. SOUTHWICK 20 Q Earlier we discussed OCR closing or 21 administratively dismissing the complaint of the 22 transgender student from George Fox University.</p>
<p>Page 150</p> <p>1 scope of the 30(b)(6) notice. But if you know, 2 you can answer in your personal capacity. 3 THE WITNESS: I was not involved in the 4 review and evaluation of those comments. 5 BY MR. SOUTHWICK 6 Q Earlier we were talking about the 7 process that an educational institution can go 8 through to request an assurance of religious 9 exemption. I want to ask: Has OCR ever denied a 10 request for assurance of religious exemption? 11 MS. SNYDER: Again I'm going to object. 12 That's outside the topics of the 30(b)(6) 13 deposition, but if you know, you can answer in 14 your personal capacity. 15 THE WITNESS: In my personal capacity, 16 it is my understanding that OCR has not denied a 17 request for assurance of religious exemption on 18 the merits, that is to say based on information 19 provided by a recipient institution. 20 But it's also my understanding that 21 some requests have been received by OCR, and they 22 did not cite to a regulation that existed or they</p>	<p>Page 152</p> <p>1 Do you recall our earlier discussion about that? 2 A I do. 3 Q My new question is: Other than that 4 complaint, has OCR dismissed any other complaints 5 on the basis of a religious exemption from the 6 time period of 2013 to the present? 7 MS. SNYDER: Again, objection. Outside 8 the topics for the 30(b)(6). 9 But if you -- if you know, you can 10 answer in your personal capacity. 11 THE WITNESS: I don't know in my 12 personal capacity. I would -- I would have to 13 seek information from -- from OCR to answer that 14 question more thoroughly, but I -- I'm -- 15 BY MR. SOUTHWICK 16 Q And who at OCR would have that 17 information? 18 A That information would be available 19 just through our regional offices. I've just 20 shared some information with you about our 21 recordkeeping. We have a case management system 22 that records a lot of data and information about</p>

<p>1 each complaint that we receive and compliance 2 reviews that we initiate or directed 3 investigations we initiate. 4 Our complaint -- complaint management 5 system does not include a field that indicates 6 whether a religious exemption was at issue in a 7 particular complaint. 8 So while that would be recorded, that's 9 not a field that I could -- I could go into the 10 case management system like I can now and punch 11 in a code and bring up a list of all complaints 12 that allege violations of Title VI with regards 13 to discipline in, you know, a certain state, for 14 example. We don't have that capacity with our 15 case management system. 16 So I would have to rely on the memories 17 of folks in the regional offices or look at 18 actual documents that were attached to a case, 19 which would be a case-by-case search, in order to 20 determine the answer to that. 21 Q Has OCR ever granted an assurance of 22 religious exemption without identifying a</p>	<p>1 And the -- her letter, as does the 2 letter requesting the assurance, makes reference 3 to the University's board of trustees and states 4 as follows. This -- I'm reading from Assistant 5 Secretary Lhamon's letter. 6 Your request explains that members of 7 the University's Board of Trustees, which, quote, 8 completely controls, end quote, the University 9 are, quote, like-minded Christians who are 10 required annually to reindicate consent to the 11 University Creed, end quote. According to your 12 letter, the Creed states that the, quote, general 13 nature and object of, end quote, the University 14 is to, quote, conduct an institution of learning, 15 ellipsis, giving special emphasis to the 16 Christian religious and the ethics revealed in 17 the Holy Scriptures, end quote. Your letter goes 18 on to state that, quote, Board members must also 19 annually read and consent to the mission 20 statement, as well as the general objectives that 21 the University has set forth in the bylaws and 22 charter and the University's philosophy of</p>
<p>Page 154</p> <p>1 controlling organization? 2 A Yes. 3 Q Can you tell me about that? 4 A Yes. I'm aware of two cases where OCR 5 granted an assurance of religious exemption 6 without there being a controlling external 7 religious organization. I've reviewed 8 documentation with regard to Bob Jones University 9 and with regard to Colorado Christian University, 10 both of which cases present a situation where 11 there was not an outside religious organization 12 that controlled the institution. 13 Q And why were -- why were the exemptions 14 granted in those cases? 15 A There is -- in the -- in the letter of 16 assurance in the Bob Jones University matter, the 17 letter of assurance that was signed by Catherine 18 Lhamon as the assistant secretary, she signed and 19 issued the letter on June 17th, 2016. She 20 recited what was presented by the Bob Jones 21 University in support of its request for an 22 assurance of a religious exemption.</p>	<p>Page 156</p> <p>1 education statement, end quote. You explain that 2 faculty are also required to, quote, affirm -- 3 quote, to affirm the University Creed, ellipsis, 4 since -- since the creed is foundational to all 5 that, bracket, the University, end bracket, does, 6 including what is taught in its classes, end 7 quote. 8 That paragraph is followed immediately 9 by a statement made by the acting -- the then 10 assistant acting -- the then assistant secretary 11 as follows: You request -- you request an 12 exemption to the extent that Title IX or its 13 implementing regulations, quote, are interpreted 14 to reach, bracket, the University's, end bracket, 15 selection of its president, and any other 16 positions at the -- bracket, the University, end 17 bracket, for which ordination is a qualification. 18 The letter proceeds on page 2 to 19 indicate that a request -- requesting a religious 20 exemption from certain provisions of Title IX, 21 quote, to the extent that Title IX or its 22 accompanying regulations are interpreted to</p>

<p>1 include selection of conference speakers or 2 reach, bracket, the University's, end bracket, 3 selection of Bible preachers in any other 4 context. You explain that the University, quote, 5 president selects speakers at his discretion, end 6 quote, for University conferences or other events 7 and that both, quote, men and women have spoken 8 at events conferences, end quote, because, quote, 9 speakers who will not preach the Bible need not 10 be ordained, end quote.</p> <p>11 I'm just sharing this as a reiteration 12 of the request.</p> <p>13 There is a listing that follows on page 14 2 of the -- the requested -- the subsections of 15 106 from -- for which an exemption was -- 16 assurance of exemption was requested, followed 17 immediately by the statement in the letter from 18 Assistant Secretary Lhamon: The University is 19 exempt from these provisions to the extent that 20 they prohibit discrimination on the basis of sex 21 in the University's decision to fill positions 22 requiring ordination and select Bible preachers</p>	<p>1 MR. SOUTHWICK: So I've introduced -- 2 if you refresh your marked exhibits, I've 3 introduced two new exhibits, Exhibit 6, which 4 includes this Bob Jones University 5 correspondence, and then Exhibit 7, which 6 includes Union University correspondence. And 7 then I would like to compare these two documents. 8 You can let me know if you've been able to pull 9 them up.</p> <p>10 (Deposition Exhibit Number 6 11 was marked for identification.)</p> <p>12 MR. DAVIS: Paul, we can pull up, I 13 think, one at a time, so we're pulling up Exhibit 14 6 first.</p> <p>15 MR. SOUTHWICK: You should be able to 16 pop them into a different window or a different 17 tab.</p> <p>18 Mr. Wills, I'd like to look at Exhibit 19 6, page -- page 6.</p> <p>20 MR. DAVIS: You can search for Exhibit 21 6, page 6.</p> <p>22 THE WITNESS: Okay. I am looking at Page 158</p>
<p>1 for University conferences and events, and 2 compliance would conflict with the controlling 3 organization's tenets.</p> <p>4 There's no further reference in the 5 letter to religious organization, an external 6 religious organization, simply what I recited at 7 the beginning of my reading here.</p> <p>8 Q Is it your understanding that the 9 granting of that exemption to Bob Jones 10 University was inconsistent with the guidelines 11 and regulations in place at the time the 12 exemption was granted?</p> <p>13 A That's not my understanding.</p> <p>14 Q And so why did that school qualify as a 15 controlling religious organization when none 16 could be identified?</p> <p>17 MS. SNYDER: Objection.</p> <p>18 Mischaracterizes the testimony.</p> <p>19 THE WITNESS: I -- at the moment, I -- 20 I can't answer your question. I may be able to 21 do so a little later on, but I, at the moment, 22 cannot.</p>	<p>1 Exhibit 6, page 6, letter from -- 2 MR. SOUTHWICK: Great. 3 THE WITNESS: -- Bob Jones University, 4 dated April 1st, yes.</p> <p>5 BY MR. SOUTHWICK</p> <p>6 Q Yeah. And that's what we were just 7 looking at. If you can go to the next page, page 8 7, that first paragraph, if you could read from 9 where it starts from "also, in the unlikely 10 event." You can read the rest of that paragraph.</p> <p>11 A Page 7. I'm sorry. I -- are we still 12 in the letter of April 1st, 2016?</p> <p>13 Q No. This is the --</p> <p>14 MR. DAVIS: It's page 7 up there.</p> <p>15 THE WITNESS: Oh, page 7. I'm sorry. 16 All right. I have found it.</p> <p>17 MR. SOUTHWICK: There we go.</p> <p>18 THE WITNESS: Top of the page. The 19 paragraph reads as follows: "Please note that 20 this letter should not be construed to grant 21 exemption from the requirements of Title IX and 22 the regulation other than as stated above. In Page 159</p>

<p>1 the event that OCR receives a complaint against 2 your institution, we are obligated to determine 3 initially whether the allegations fall within the 4 exemption here granted. Also, in the unlikely 5 event that a complainant alleges that the 6 practices followed by the institution are not 7 based on the religious tenets identified in your 8 request, OCR is obligated to identify a 9 controlling organization to contact to verify 10 those tenets. If the organization provides an 11 interpretation of tenets that has a different 12 practical impact than that described by the 13 institution, or if the organization denies that 14 it controls the institution, this exemption will 15 be rescinded."</p> <p>16 MR. SOUTHWICK: Thank you. And that 17 was reading from Exhibit 6 regarding 18 correspondence with Bob Jones University. 19 I'd like you to open Exhibit 7, which 20 is correspondence between OCR and Union 21 University. And I'd like you to start looking at 22 page 10 of Exhibit 7, which should be a</p>	<p>1 similar paragraph to the paragraph that you just 2 read from Exhibit 6 regarding Bob Jones 3 University. 4 However, this paragraph states: "Also, 5 in the unlikely event that a complainant alleges 6 that the practices followed by the institution 7 are not based on the religious tenets of the 8 controlling organization, OCR is obligated to 9 contact the controlling organization to verify 10 those tenets." 11 Is that an accurate reading there? 12 A That is an accurate reading. 13 Q All right. Do you notice the 14 difference in this letter compared to the Bob 15 Jones University letter? 16 Specifically, in this letter, Exhibit 7 17 says OCR is obligated to contact the controlling 18 organization; whereas, in Exhibit 6, with respect 19 to Bob Jones University, it says that OCR is 20 obligated to identify a controlling organization 21 to contact. 22 Is that an accurate reading of the</p>
<p>Page 162</p> <p>1 March 24th, 2015 letter from OCR to the president 2 of Union University. Let me know when you've 3 located that. 4 (Deposition Exhibit Number 7 5 was marked for identification.) 6 THE WITNESS: Page 10. I've located 7 the exhibit. All right. I have located page 10 8 of the exhibit. 9 BY MR. SOUTHWICK 10 Q All right. And I don't need you to 11 read everything, but just making sure we're on 12 the same one, this starts with "Dear President 13 Oliver" and March 24th, 2015? 14 A That's correct. It's the same one. 15 Q All right. And, you know, there's a 16 two-page letter, and this appears to be a letter 17 from OCR granting Union -- granting Union 18 University a assurance of religious exemption. 19 Is that accurate? 20 A That is accurate. 21 Q All right. And I'd like to go to the 22 last full paragraph on page 11, which is a very</p>	<p>Page 164</p> <p>1 document? 2 A I -- before I answer, let me have a 3 look at the document. 4 Mr. Southwick, could you point out 5 again what you're asking me about with regard to 6 the differences between these paragraphs? 7 Q Sure. I wonder if I can highlight 8 here -- is there a highlight function? No. 9 Okay. All right. Well, the specific language -- 10 A I -- I actually see the difference. 11 Sorry for the delay, but I found it. 12 Q That's all right. 13 A The Union letter recites: "Also, in 14 the unlikely event that a complainant alleges 15 that the practices followed by the institution 16 are not based on the religious tenets of the 17 controlling organization, OCR is obligated to 18 contact the controlling organization to verify 19 those tenets," which differs from the sentence in 20 the Bob Jones letter, which reads, "Also, in the 21 unlikely event that a complainant alleges that 22 the practices followed by the institution are not</p>

1 based on the religious tenets identified in your  
2 request, OCR is obligated to identify a  
3 controlling organization to contact to verify  
4 those tenets."

5 The difference being --

6 Q So why is OCR using different language  
7 with respect to these two educational  
8 institutions?

9 MS. SNYDER: Objection. This is  
10 outside the scope. I believe we had a time limit  
11 of September 1st, 2013 going forward on our -- on  
12 our agreement. This appears to be a letter from  
13 the '70s that you're asking him to compare. So  
14 object to the scope of -- I believe you're  
15 outside the topics.

16 And if you know the answer, you may  
17 respond in your personal capacity --

18 THE WITNESS: I do not --

19 MR. SOUTHWICK: Specifically --

20 THE WITNESS: -- know the answer.

21 MR. SOUTHWICK: Just to clarify the  
22 record, these are both from -- this one is

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1 THE WITNESS: Your question,  
2 Mr. Southwick, is -- could you repeat that for  
3 me, please? It doesn't appear that OCR has  
4 identified another controlling -- a controlling  
5 organization elsewhere in the letter?

6 BY MR. SOUTHWICK

7 Q Yeah. In Exhibit 6, the June 17th,  
8 2016 letter, the letter recites what Bob Jones  
9 University has told OCR about the university's  
10 governance structure, but there's actually no  
11 conclusion that a controlling organization exists  
12 with respect to Bob Jones University; isn't  
13 that --

14 MS. SNYDER: Objection.

15 BY MR. SOUTHWICK

16 Q -- fair to say?

17 MS. SNYDER: Objection. Misstates his  
18 testimony and the letter.

19 THE WITNESS: Is there a question?

20 I --

21 MS. SNYDER: Uh-huh.

22

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1 March 20 -- Exhibit 7 is March 24th, 2015, and  
2 Exhibit 6 is June 17th, 2016. So they are within  
3 that time frame.

4 BY MR. SOUTHWICK

5 Q My question to you, Mr. Wills, is:  
6 Exhibit 6, would it -- the ordinary reading of  
7 that statement, OCR is obligated to identify a  
8 controlling organization, wouldn't that imply  
9 that OCR has not, in fact, identified a  
10 controlling organization?

11 A That may be one reading. That's a  
12 possible reading of that sentence. I can't say  
13 definitively whether that was the intention in  
14 drafting the sentence in that particular way.

15 Q Looking at Exhibit 6, the letter where  
16 it says OCR is obligated to identify a  
17 controlling organization to contact, it doesn't  
18 appear that anywhere else in that letter that OCR  
19 does identify a controlling organization.

20 Is that accurate?

21 MS. SNYDER: Objection. Misstates his  
22 testimony and the letter.

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1 BY MR. SOUTHWICK

2 Q Can you identify anywhere in this  
3 letter where OCR makes a conclusion that there is  
4 a controlling organization? Because the only  
5 thing I can see is the recitation of what Bob  
6 Jones University has said and then OCR's  
7 conclusion that it would have to identify a  
8 controlling organization.

9 A I agree.

10 MS. SNYDER: Objection.

11 THE WITNESS: Oh, sorry.

12 MS. SNYDER: It's ambiguous and  
13 misstates the letter and his earlier testimony.

14 THE WITNESS: In my personal capacity  
15 reading the letter, I agree that there's no  
16 reference -- no other reference -- there's no  
17 reference in the letter to a religious  
18 organization. There's no -- there's no naming of  
19 a religious organization. There's no reference  
20 to a religious organization elsewhere in the  
21 letter.

22

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1 BY MR. SOUTHWICK

2 Q Or indeed a controlling organization?  
3 A A controlling organization. Yes.

4 MS. SNYDER: Objection. Misstates his  
5 testimony and the letter.

6 BY MR. SOUTHWICK

7 Q Mr. Wills, are you familiar with any of  
8 the underlying allegations in the complaints that  
9 are included in the chart that the Department  
10 produced, which is Exhibit 2 for this deposition,  
11 the chart that lists all the complaints?

12 Are you familiar with the underlying  
13 allegations at all?

14 A I am familiar broadly with the  
15 allegations. I have not read all of the  
16 complaints, and I could not recite for you what  
17 the specific allegations are in those complaints.

18 Q I'm going to ask you some questions  
19 about some of the allegations in there. We  
20 might -- we might go into detail on one or two,  
21 but I can -- I can tell you that certain of the  
22 complaints allege discrimination on the basis of

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1 complaint. I haven't read any of the interviews,  
2 if there have been interviews, or any further  
3 information that we have, which I would want to  
4 do before I would say definitively, yes, we would  
5 assert jurisdiction.

6 BY MR. SOUTHWICK

7 Q So are you saying that it's the  
8 Department's current position that an educational  
9 institution can discriminate against someone  
10 because they've entered into a same-sex marriage?

11 A No, I am not --

12 Q I thought your --

13 A -- saying that.

14 Q -- earlier testimony was that people  
15 are now being protected on the basis of sexual  
16 orientation and gender identity.

17 A Right. But you're asking me to reach a  
18 conclusion about a hypothetical or a specific  
19 case which I don't have before me. But I am not  
20 saying that it's the Department's position that  
21 we would not exercise jurisdiction under these  
22 circumstances.

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1 the student entering into a same-sex marriage.  
2 So my question to you is: Would OCR  
3 consider an allegation of discrimination based on  
4 a same-sex marriage to be within the subject  
5 matter jurisdiction of OCR?

6 A The allegation being that the  
7 individual was discriminated against, however  
8 that was, by the institution because they entered  
9 into a same-sex marriage?

10 Q Correct.

11 A Again, I don't --

12 MS. SNYDER: I'm going to object based  
13 on -- I believe that's outside the topics.

14 And if you know the answer, you can  
15 answer in your personal capacity.

16 THE WITNESS: Well, in my personal  
17 capacity -- but, again, this is -- this is a  
18 process. These are fact-specific situations. I  
19 don't want to assert jurisdiction when I've not  
20 examined all the facts and how the case has been  
21 presented. It is possible that OCR would assert  
22 jurisdiction there, but I haven't read the

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1 Q So let me ask more specifically.

2 In the context of a complaint that was  
3 not involving religious exemption issues, so  
4 let's say a public university or a secular  
5 private university where there's no religious  
6 exemption issue, if a student filed a Title IX  
7 complaint with OCR that said the following: I  
8 married a same sex partner, and as a result of  
9 that, I was expelled from the institution, my  
10 question to you is: Would OCR have subject  
11 matter jurisdiction over that type of an  
12 allegation?

13 MS. SNYDER: Objection. Speculation.  
14 It also is outside the topics in the 30(b)(6)  
15 notice.

16 You can answer in your personal  
17 capacity if you know.

18 THE WITNESS: In my personal capacity,  
19 I would say that we would assert jurisdiction, in  
20 my personal capacity.

21 But I do want to note again that I  
22 am -- I don't wish to speculate, but I would --

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1 in my personal capacity, I would say, yes, we  
2 would assert jurisdiction over that claim  
3 under -- based on -- discrimination based on sex  
4 under our current interpretation of Bosworth  
5 [sic], yes.

6 BY MR. SOUTHWICK

7 Q And would the same also be true with  
8 respect to a student who was denied housing -- a  
9 transgender student who was denied housing  
10 consistent with their gender identity?

11 MS. SNYDER: Objection. I believe you  
12 are beyond the topics in the 30(b)(6) notice and  
13 are asking a speculative question.

14 You can answer in your personal  
15 capacity if you know.

16 THE WITNESS: In my personal capacity,  
17 my answer is yes, we would assert jurisdiction.

18 BY MR. SOUTHWICK

19 Q And if a student filed a Title IX  
20 complaint with OCR saying that their public or  
21 secular private college denied the student a  
22 right to start an LGBTQ student group or a club,

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1 discrimination based on sexual orientation and  
2 gender identity. And what I'm trying to find out  
3 is what does OCR generally consider to be  
4 unlawful discrimination based on sexual  
5 orientation or gender identity such that it would  
6 have subject matter jurisdiction, aside from  
7 issues of religious exemption or timeliness.

8 So maybe I could answer -- ask it this  
9 way: What kind of protections does the Office of  
10 Civil Rights offer to LGBTQ students regarding  
11 their Title IX rights? What kinds of things are  
12 protected? Does it include housing? Does it  
13 include the right to marriage? What kinds of  
14 things are protected?

15 MS. SNYDER: Okay. Objection.

16 Compound question. Ambiguous. Speculation.  
17 You're also outside the topics in the 30(b)(6)  
18 notice.

19 You can answer that question in your  
20 personal capacity if you know.

21 THE WITNESS: In my personal capacity,  
22 this -- this is a -- what you laid out in your

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1 would OCR have subject matter jurisdiction over  
2 that type of a complaint?

3 MS. SNYDER: Again, objection.  
4 Speculation. Also outside the topics in the  
5 30(b)(6) notice.

6 You can answer in your personal  
7 capacity if you know.

8 THE WITNESS: In -- only in my personal  
9 capacity, what my recommendation would be, we  
10 would -- we would look carefully at that case, as  
11 we would at all these, but about the formation of  
12 a club, I would recommend assertion of  
13 jurisdiction. So we'd certainly be --

14 BY MR. SOUTHWICK

15 Q So I know -- I know your counsel has  
16 been talking about personal capacity. I would  
17 like to know in your representative capacity --  
18 and maybe I can ask it this way. What I'm trying  
19 to understand -- and the reason -- the reason I'm  
20 asking this is because, you know, we have a  
21 variety of complaints that have been filed, and  
22 they have a variety of allegations of

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1 question, the areas that you laid out, is a  
2 fairly new consideration for OCR. I can tell you  
3 that OCR is interested in interpreting its  
4 jurisdiction over SOGI, sexual orientation gender  
5 identity complaints, broadly and is committed to  
6 doing so.

7 I refrain here from giving you  
8 a definitive answer in every single hypothetical  
9 you raise because, again, I don't have a full set  
10 of facts before me, but I am very comfortable  
11 asserting that the -- that OCR is currently  
12 interpreting its jurisdiction with regard to sex,  
13 sexual orientation, gender identity, broadly and  
14 fairly.

15 BY MR. SOUTHWICK

16 Q When looking at the purpose of the  
17 Office of Civil Rights, would you agree that a  
18 purpose of the Office of Civil Rights is to  
19 prevent sex discrimination in educational  
20 institutions that receive federal financial  
21 assistance?

22 MS. SNYDER: Objection. Outside the

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45 (Pages 174 - 177)

<p>1 scope of the 30(b)(6) notice.</p> <p>2 You can answer the question in your</p> <p>3 personal capacity if you know.</p> <p>4 THE WITNESS: I agree with that, yes.</p> <p>5 BY MR. SOUTHWICK</p> <p>6 Q And would you agree that the religious</p> <p>7 exemption to Title IX restricts the Office of</p> <p>8 Civil Rights' ability to prevent discrimination</p> <p>9 at certain educational institutions that receive</p> <p>10 federal financial assistance and claim a</p> <p>11 religious exemption?</p> <p>12 MS. SNYDER: Objection. That's outside</p> <p>13 the topics in the 30(b)(6) notice. If -- and</p> <p>14 outside the scope. If you -- if you know, you</p> <p>15 can answer in your personal capacity.</p> <p>16 THE WITNESS: I agree that sending an</p> <p>17 assurance that a religious exemption exists under</p> <p>18 certain circumstances can -- I'm sorry. Rephrase</p> <p>19 the end of your question.</p> <p>20 BY MR. SOUTHWICK</p> <p>21 Q It can restrict the ability of OCR to</p> <p>22 prevent sex discrimination at certain educational</p>	<p>1 A I've pulled the exhibit up.</p> <p>2 Q All right. Looking at Exhibit 8, have</p> <p>3 you seen this document before?</p> <p>4 A I have not read this document before.</p> <p>5 Q I don't need you to read it out loud,</p> <p>6 but I'd like you to take a moment to familiarize</p> <p>7 yourself with the document. And then just let me</p> <p>8 know when you've had a chance to do so.</p> <p>9 A I've perused the document.</p> <p>10 Q Did somebody have their hand up, or is</p> <p>11 that -- did I accidentally do that?</p> <p>12 A Oh, did I hit something?</p> <p>13 VIDEO TECHNICIAN: It looks like Mr.</p> <p>14 Wills accidentally did that.</p> <p>15 THE WITNESS: Sorry.</p> <p>16 MR. SOUTHWICK: Okay. I just wondered</p> <p>17 if counsel or someone had a question.</p> <p>18 BY MR. SOUTHWICK</p> <p>19 Q All right. Thank you, Mr. Wills. This</p> <p>20 is Exhibit 8, and I'm going to look at page 2.</p> <p>21 And page 2 appears to be a start of a letter from</p> <p>22 the assistant secretary dated April 6th, 2021; is</p>
<p>Page 178</p> <p>1 institutions.</p> <p>2 A Yes, as a --</p> <p>3 MS. SNYDER: Again, objection. Outside</p> <p>4 the scope of the 30(b)(6) notice.</p> <p>5 If -- you can answer in your personal</p> <p>6 capacity if you know.</p> <p>7 THE WITNESS: I agree that in certain</p> <p>8 circumstances, it can restrict the ability of OCR</p> <p>9 to address discrimination at a recipient</p> <p>10 institution.</p> <p>11 MR. SOUTHWICK: Sorry. Bear with me.</p> <p>12 I'm trying to pull up another exhibit here. All</p> <p>13 right. I'm marking what I will introduce as</p> <p>14 Exhibit 8. You can probably refresh your screen</p> <p>15 now. Exhibit 8 is a letter to students,</p> <p>16 educators, and other stakeholders regarding</p> <p>17 Executive Order 14021.</p> <p>18 (Deposition Exhibit Number 8</p> <p>19 was marked for identification.)</p> <p>20 BY MR. SOUTHWICK</p> <p>21 Q Mr. Wills, let me know when you've had</p> <p>22 a chance to pull that exhibit up.</p>	<p>Page 180</p> <p>1 that accurate?</p> <p>2 A That's correct.</p> <p>3 Q And then the second paragraph starts,</p> <p>4 "Yet sex discrimination, including sexual</p> <p>5 harassment, which encompasses sexual violence,</p> <p>6 continues to threaten equal access for students</p> <p>7 of all ages."</p> <p>8 Would you agree with the assistant</p> <p>9 secretary's statement?</p> <p>10 MS. SNYDER: Objection. Outside the</p> <p>11 topics in the 30(b)(6) notice.</p> <p>12 You can answer in your personal</p> <p>13 capacity if you know.</p> <p>14 THE WITNESS: I strongly agree with the</p> <p>15 acting assistant secretary's statement you just</p> <p>16 read.</p> <p>17 BY MR. SOUTHWICK</p> <p>18 Q And then how about the second one?</p> <p>19 "Experiencing sex discrimination in any form can</p> <p>20 derail a student's opportunity to learn,</p> <p>21 participate, and thrive in and outside of the</p> <p>22 classroom, including in extracurricular</p>

1 activities and other educational settings."

2 MS. SNYDER: Again --

3 BY MR. SOUTHWICK

4 Q Do you agree with that statement from

5 the assistant secretary?

6 MS. SNYDER: Again, objection. Outside

7 the topics on the -- the scope of the topics in

8 the 30(b)(6).

9 You can answer in your personal

10 capacity if you know.

11 THE WITNESS: I agree with that

12 statement.

13 BY MR. SOUTHWICK

14 Q So I'd like you to answer in -- I'd

15 also like your response on -- this letter was

16 included on the Department of Education's website

17 along with a bunch of other resources regarding

18 LGBT students.

19 And my question to you about this

20 letter is: Is this letter used as guidance for

21 the Office of Civil Rights in making

22 determinations regarding Title IX complaints that

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1 But it is not an internal guidance

2 document that lays out specifics on how you

3 analyze jurisdiction in certain circumstances or

4 what are the next steps you should take in an

5 investigation of a case that asserts a violation

6 of law under one of these circumstances.

7 MR. SOUTHWICK: I'm going to introduce

8 another exhibit. It will be marked as Exhibit 9.

9 Give me a second. All righty. Okay. Exhibit 9

10 should be uploading. It's a little bit longer --

11 a little bit bigger of a file. There, it should

12 be up right now.

13 (Deposition Exhibit Number 9

14 was marked for identification.)

15 BY MR. SOUTHWICK

16 Q While people are loading it, I can

17 describe Exhibit 9. It is a document entitled

18 "Questions and Answers on the Title IX

19 Regulations on Sexual Harassment," dated

20 July 2021.

21 Mr. Wills, can you just let me know

22 when you've had a chance to pull that up?

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1 are reviewed by the office?

2 MS. SNYDER: Objection. Outside the

3 scope of the 30(b)(6) notice.

4 You can answer in your personal

5 capacity if you know.

6 THE WITNESS: This is not an internal

7 guidance document. It's a document -- a

8 statement of principle and a statement of

9 approach that is generally -- that's circulated

10 to the -- to the public generally, to recipients,

11 to complainants, advocacy groups, parents, to

12 anyone who might have occasion to read it.

13 It's not an internal guidance document,

14 but it states a principle and a direction that

15 the Department is taking that will certainly

16 influence -- it doesn't go into specifics about

17 how we investigate cases or what steps we take to

18 analyze evidence or any such thing, but it states

19 a direction and principles that -- that -- to

20 which OCR is committed, and that, of course, is a

21 broad principle guidance for our movement forward

22 in investigating cases.

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1 A I've -- I've pulled up the document.

2 Q All right. So the last exhibit we

3 looked at was a letter from the assistant

4 secretary where -- and you described it as, you

5 know, stating some of the principles, but not an

6 internal guidance.

7 Is this Q and A -- what kind of a

8 document is this Q and A? Is this internal

9 guidance, external guidance?

10 A This is -- this is external guidance.

11 This is guidance that's available to any member

12 of the public. And it's a compilation of

13 questions that the Department -- that OCR has

14 received from many members of the public with

15 regard to the Title IX regulations on sexual

16 harassment.

17 Q So let's see. If you look down in the

18 table of contents, the last section or chapter

19 heading is XVII, religious exemptions, and that

20 takes you down to page 32. I think if you click

21 on it, it will auto take you there. And I'm --

22 I'd like to ask you some questions about this.

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1 So let me know when you're -- when you're at  
2 religious exemptions.

3 A I am on that page, 17, religious  
4 exemptions.

5 Q Great.

6 MS. SNYDER: I'm sorry, Counsel. What  
7 page?

8 MR. SOUTHWICK: It's page 32. It's  
9 page 42 if you're looking at the Exhibit Share  
10 numbers, but if you're looking at the number on  
11 the document itself, it's page 32 of the  
12 document. Questions 66 and 67.

13 BY MR. SOUTHWICK

14 Q And I'll just ask you, Mr. Wills: Did  
15 you -- did you review this -- this section of the  
16 document in advance of your deposition today?

17 A I did not review this particular  
18 section or this -- I did not review this  
19 document. I've seen the document before. I've  
20 read parts of it, read parts of it. I did not  
21 review this section at all, so I certainly have  
22 not done so in preparation for today's

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1 also get a number of questions that come to us  
2 directly from -- from recipients, from  
3 complainants, from advocacy groups into our --  
4 what's called our open center.

5 So I don't know that all of the  
6 questions here were questions that were raised  
7 during hearings, their hearing, although they  
8 might have been. But they may also have included  
9 questions that we receive, as we do very  
10 frequently now through our open center, and then  
11 forwarded for a response.

12 So I don't know the source exactly of  
13 all the questions, but I have a fairly good idea  
14 where they might be coming from.

15 BY MR. SOUTHWICK

16 Q And do you have a sense of where the  
17 requests regarding these two questions were  
18 coming from?

19 A I do not.

20 Q I'd like to look at the third paragraph  
21 of the answer for 66, which states: "The 2020  
22 amendments state that a school is not required to

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1 deposition.

2 Q All right. If you wouldn't mind taking  
3 a moment just to review the question and answer  
4 for 66 and 67, and then let me know when you've  
5 had a chance to review those.

6 A I have reviewed the response to  
7 every -- both questions and the responses to  
8 them.

9 Q I'd like to ask you about -- well,  
10 first of all, earlier you said that the -- this  
11 document was created and -- did you say in  
12 response to -- was it questions from the public,  
13 or was it in response to some kind of public  
14 hearing or comment, or why was this overall  
15 document created?

16 A I --

17 MS. SNYDER: Objection. Compound.

18 THE WITNESS: I can't say with  
19 specificity. It was -- it was created, I know,  
20 in response to comments and questions.

21 Where those -- the source of those or  
22 whether it was as a result of a hearing or -- we

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1 seek a written assurance of its religious  
2 exemption under Title IX before claiming the  
3 exemption, and the regulations state that a  
4 school can invoke a religious exemption after OCR  
5 has received a complaint regarding the school."

6 Is this description consistent with  
7 your understanding of OCR's current policy and  
8 practice on this issue?

9 A Yes, it is.

10 Q Given the standard, a student could  
11 attend an educational institution not knowing  
12 whether or not their rights under Title IX will  
13 be able to be protected by OCR; is that accurate?

14 MS. SNYDER: Objection. Outside the  
15 scope of the 30(b)(6) notice, and, additionally,  
16 it's speculative and ambiguous.

17 You can answer in your personal  
18 capacity if you know.

19 THE WITNESS: In my personal capacity,  
20 I believe that that could be the case, that a  
21 student could attend an institution not knowing  
22 whether that institution had an assurance of a

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<p>1 religious exemption.</p> <p>2 BY MR. SOUTHWICK</p> <p>3 Q Is OCR concerned about the consumer</p> <p>4 protection aspect of not providing notice to</p> <p>5 students?</p> <p>6 MS. SNYDER: Objection. Outside the</p> <p>7 topics in the 30(b)(6) notice.</p> <p>8 If you know, you can answer in your</p> <p>9 personal capacity.</p> <p>10 THE WITNESS: I don't know the answer</p> <p>11 to that question.</p> <p>12 BY MR. SOUTHWICK</p> <p>13 Q OCR has not even considered the</p> <p>14 transparency, notice, consumer protection issues</p> <p>15 regarding schools that it funds with federal</p> <p>16 financial assistance -- it hasn't had any concern</p> <p>17 with those issues?</p> <p>18 MS. SNYDER: Objection. Outside the</p> <p>19 scope of -- of the 30(b)(6) notice. It's,</p> <p>20 additionally, an ambiguous question.</p> <p>21 You can answer in your personal</p> <p>22 capacity if you know.</p>	<p>1 always file a complaint with OCR.</p> <p>2 Q So students may always file a</p> <p>3 complaint. However, that complaint may be</p> <p>4 dismissed based on the assertion of a religious</p> <p>5 exemption or an assurance of religious exemption;</p> <p>6 is that right?</p> <p>7 A It may be dismissed only if the</p> <p>8 assurance of -- if the religious exemption that</p> <p>9 the assistant secretary assured covers the</p> <p>10 specific allegations of the complaint.</p> <p>11 It certainly wouldn't be dismissed</p> <p>12 simply on the strength of the assertion of -- of</p> <p>13 a religious exemption. It would only be assured</p> <p>14 on the assurance of one and only if that one or</p> <p>15 those exemptions were -- actually addressed what</p> <p>16 was alleged in the complaint.</p> <p>17 Q I want to give you an example. It's a</p> <p>18 specific example from one of our plaintiffs, and</p> <p>19 this relates to Union University. We looked at</p> <p>20 that correspondence about Union University</p> <p>21 earlier. They have a religious exemption</p> <p>22 assurance.</p>
<p>Page 190</p> <p>1 THE WITNESS: I don't personally know</p> <p>2 whether OCR has any concern related to what you</p> <p>3 just said. I am tempted to speculate. I won't.</p> <p>4 But OCR is deeply committed to the protection of</p> <p>5 all students in educational environments, deeply</p> <p>6 committed to that, and that in conjunction with</p> <p>7 what I said earlier about our approach to sexual</p> <p>8 orientation should suggest to you something about</p> <p>9 OCR.</p> <p>10 But I am not -- in this capacity, I am</p> <p>11 speaking on my own behalf, but I just remind you</p> <p>12 of what I've said earlier and also what I just</p> <p>13 said about OCR's commitment to ensuring that all</p> <p>14 students have a safe educational environment.</p> <p>15 BY MR. SOUTHWICK</p> <p>16 Q In Question 67, it asks whether a</p> <p>17 student is allowed to file a complaint with OCR</p> <p>18 against a school that has obtained an assurance</p> <p>19 of a religious exemption from OCR, and the answer</p> <p>20 is yes.</p> <p>21 Is that accurate?</p> <p>22 A Yes, that's correct. Students may</p>	<p>Page 192</p> <p>1 This student's name is Alex Duron.</p> <p>2 He's listed in Exhibit 2. And he was -- his</p> <p>3 admission to a nursing program at Union</p> <p>4 University was rescinded after the university</p> <p>5 discovered that he had a same-sex partner.</p> <p>6 Alex -- Alex describes being devastated</p> <p>7 by having his admission rescinded because of his</p> <p>8 sexual orientation, and having gone to look on</p> <p>9 OCR's website and found that Union had a</p> <p>10 religious exemption, and Alex describes that as</p> <p>11 having discouraged him from even trying to file</p> <p>12 anything with OCR.</p> <p>13 Would you agree that -- that when an</p> <p>14 assurance of religious exemption is on file that</p> <p>15 that can have a chilling effect on whether or not</p> <p>16 students at those institutions will even file a</p> <p>17 Title IX complaint with OCR?</p> <p>18 MS. SNYDER: Objection. The question</p> <p>19 calls for speculation. It's also outside the</p> <p>20 scope of the 30(b)(6) topics.</p> <p>21 If you know, you can answer in your</p> <p>22 personal capacity.</p>

1       THE WITNESS: Well, I don't know,  
2 because I don't know the mind of -- of students  
3 who might realize that there's an exemption and  
4 what they would do.

5       So I -- I wouldn't speculate as to what  
6 conclusion they may -- they might draw about an  
7 institution if they discover that it has a  
8 religious exemption. I would be uncomfortable,  
9 and it would probably be unfair to do that. I  
10 can't speak on behalf of students and what they  
11 might feel upon learning such a thing.

12 BY MR. SOUTHWICK

13       Q Has OCR considered the impact that its  
14 religious exemption letters have on LGBT students  
15 at institutions that have these religious  
16 exemptions on file?

17       MS. SNYDER: Again, objection. Outside  
18 the 30(b)(6) topics. You can answer in your  
19 personal capacity if you know.

20       THE WITNESS: I do not know in my  
21 personal capacity whether -- whether OCR has  
22 given consideration to that impact. But I would

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1 outside the 30(b)(6) topic -- topics and outside  
2 the scope. It's also speculative.  
3       If -- if you know, you can answer in  
4 your personal capacity.

5       THE WITNESS: I would reiterate and  
6 answer -- liken to the one I just gave. You  
7 know, I don't want to speculate as to what a  
8 student's response would be to learning that  
9 there's a religious exemption or whether that is  
10 a barrier to that particular student's filing a  
11 complaint.

12 BY MR. SOUTHWICK

13       Q We talked earlier that, you know,  
14 OCR's -- or one of OCR's purposes is to protect  
15 students from sex discrimination.

16       Would you agree that, in general,  
17 the -- the enforcement mechanism or the  
18 enforcement activities of OCR are one of the  
19 primary ways that OCR can protect students from  
20 sex discrimination?

21       A Yes. I -- I strongly agree with that  
22 statement.

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1 reiterate my earlier answer about OCR's concerns,  
2 and, you know, you can draw any inference you  
3 like from that.

4       But I personally do not know whether,  
5 you know, somebody at a high level or the  
6 assistant secretary has said to me, yes, we're --  
7 we're interested in this, we're looking at it. I  
8 don't know everything that the assistant  
9 secretary and the people in program legal group  
10 are assessing or all of their conversations. I'm  
11 not -- that's not part of what I'm attached to in  
12 the -- in OCR.

13       So I can't say that -- that they are,  
14 but I certainly cannot say that they are not  
15 concerned.

16 BY MR. SOUTHWICK

17       Q Would you agree that the religious  
18 exemption to Title IX presents an additional  
19 roadblock for some students who are attempting to  
20 get protections from OCR for the discrimination  
21 they experience?

22       MS. SNYDER: Again, objection. That's

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1       Q And would you agree that OCR's  
2 complaint process empowers students to assert  
3 their Title IX rights?

4       MS. SNYDER: Objection. Outside the  
5 scope of the 30(b)(6) topic and speculative.

6       If you know, you can answer in your  
7 personal capacity.

8       THE WITNESS: In my personal capacity,  
9 I agree that it does empower students to assert  
10 their rights, students and other individuals to  
11 assert their rights.

12 BY MR. SOUTHWICK

13       Q All right. I'd like to ask you some  
14 questions again going back to the subject matter  
15 jurisdiction of OCR and -- and, again, I'm trying  
16 to understand that fully with respect to how that  
17 would apply to the Title IX complaints of the  
18 plaintiffs that are included on Exhibit 2.

19       My understanding is that OCR can  
20 investigate claims from students regarding  
21 discrimination and that the discrimination could  
22 be discriminatory policies at the institution, as

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<p>1 well as specific acts of discrimination at the 2 institution. Is that accurate? 3 A That is accurate. 4 Q And when looking at -- strike that. 5 Is OCR aware of the -- beyond the Title 6 IX complaints that have been identified in 7 Exhibit 2, has OCR been made aware of sexual 8 orientation or gender identity discrimination 9 occurring at religiously affiliated educational 10 institutions that are subject to its personal 11 jurisdiction? 12 MS. SNYDER: Objection. Outside the 13 topics -- outside the scope of the topics for the 14 30(b)(6) deposition. 15 If you know, you can answer in your 16 personal capacity. 17 THE WITNESS: I don't know for a fact, 18 but -- that would be speculation, but I would -- 19 I will venture speculation here. That may have 20 been raised in the -- the hearings, the Title IX 21 hearings. They were quite lengthy. We received 22 a lot of feedback. I can't quantify it for you.</p>	<p>1 directed investigation. 2 So, yes. Not exclusively, but, yes, 3 they would be elements that we would consider. 4 Q Has the Office of Civil Rights -- 5 strike that. 6 Based on numerous media accounts within 7 the last year and in years prior, there appears 8 to be widespread LGBTQ discrimination at hundreds 9 of educational institutions that receive federal 10 financial assistance. 11 Is OCR generally aware of those 12 reports? 13 MS. SNYDER: Objection. Outside the 14 scope of the 30(b)(6) notice or -- excuse me -- 15 outside the scope of the topics in the 30(b)(6) 16 notice. If you know in your personal capacity, 17 you can answer. 18 THE WITNESS: Yes. Generally, OCR is 19 aware of reports of -- of discrimination of any 20 sort and certainly discrimination against LGBTQ+ 21 students. Yes. 22</p>
<p>1 That was -- those hearings were handled by our 2 program legal group and certainly the assistant 3 secretary. 4 But it seems reasonable to me that 5 feedback was received from the LGBTQ+ community 6 under those circumstances. And I have not yet 7 read transcripts of all of that. They're quite 8 lengthy. 9 BY MR. SOUTHWICK 10 Q You stated earlier that a directed 11 investigation or a compliance review could be 12 opened in response to news reports or advocacy 13 groups bringing issues to OCR's attention; is 14 that correct? 15 A Those -- those -- those are two 16 elements that we would consider in determining 17 whether to open a directed investigation or a 18 compliance review. There are further 19 considerations for compliance reviews. But for 20 directed investigations, those are two triggers, 21 if you will, that we would consider in 22 determining whether it's appropriate to open a</p>	<p>1 BY MR. SOUTHWICK 2 Q So why isn't OCR doing anything about 3 it? 4 MS. SNYDER: Objection. Outside the 5 scope of the topics in the 30(b)(6) notice and 6 similarly makes -- misstates prior testimony. 7 If -- if you know, you can answer in 8 your personal capacity. 9 THE WITNESS: Well, in my personal 10 capacity, I disagree with the statement that 11 OCR's doing -- isn't doing anything about it. 12 OCR -- we've just looked at some 13 documents today that are very public-facing 14 documents that are signaling to many communities, 15 including the LGBTQ+ community, that OCR is 16 welcoming -- at least they're coming in and 17 filing complaints. We've done a lot of outreach. 18 We had a wonderful video for LGBTQ+ students that 19 the acting assistant secretary and general 20 counsel and I believe an acting from HHS made. 21 We are sending -- as part of what we're 22 doing, we are sending very different messages to</p>

1 those communities now. This is, as you know, a  
2 relatively new administration. We just yesterday  
3 had a new assistant secretary confirmed. There  
4 will be movement. There already has been  
5 movement. As I said before, OCR is deeply  
6 committed, particularly in this administration,  
7 to equity and ensuring that all students have  
8 equal access to an education, to a quality  
9 education.

10 We have made very deliberate strides  
11 and announcements to the LGBTQ+ community about,  
12 yes, we are open, yes, please come to us, yes, we  
13 will -- we will address complaints that you bring  
14 to us, but please do bring them.

15 So that's, in my opinion, speaking in  
16 my personal capacity here, a very important step,  
17 very important statements to have made to  
18 communities. That word is out. The doors are  
19 open. And so I think we have taken steps. I  
20 think we've taken some very important steps.

21 There are more steps to be taken. I'm  
22 not going to speculate here has to what those

1 BY MR. SOUTHWICK  
2 Q Well, you would agree, though, that  
3 there is a pretty big asterisk for students who  
4 are at religious educational institutions that  
5 are claiming a religious exemption to  
6 discriminate against LGBTQ students because there  
7 has to be a caveat in all that messaging for  
8 those students; isn't that accurate?

9 MS. SNYDER: Objection. Outside the  
10 topics in the 30(b)(6) notice. Similarly,  
11 ambiguous question.

12 If -- you can answer in your personal  
13 capacity if you know.

14 THE WITNESS: I don't know if it's a  
15 big asterisk, but we've certainly just reviewed  
16 that in -- in the Q&A, in the July 2021 Q&A, and  
17 the last 66 and 67 are questions that address  
18 that issue for students who are at religious  
19 institutions who may request assurances of  
20 religious exemption or have assurance of  
21 religious exemptions.

22

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1 steps would be. That's not my role. And I don't  
2 know what they are, but I -- I do know that given  
3 the start we've made and the direction we're  
4 moving in, there will be steps.

5 BY MR. SOUTHWICK

6 Q And those advances, you know, they  
7 apply without caveat for students who are at a  
8 public institution or at a secular private  
9 educational institution. Would you agree?

10 A All students --

11 MS. SNYDER: Objection.

12 THE WITNESS: Oh, I'm sorry.

13 MS. SNYDER: Objection. You're outside  
14 the scope of the 30(b)(6) notice.

15 You can answer in your personal  
16 capacity if you know.

17 THE WITNESS: In my personal capacity,  
18 those are made without distinction between  
19 students at public or private institutions.

20 They're made available -- the message is for all  
21 students.

22

1 BY MR. SOUTHWICK

2 Q So there are -- there are more than 200  
3 educational institutions that receive federal  
4 financial assistance that explicitly discriminate  
5 against LGBTQ students in both policy and  
6 practice. They validly do.

7 Can you see how for LGBTQ students at  
8 those institutions, they might view themselves as  
9 standing at OCR's door knocking, knocking,  
10 knocking, and feeling a sense of betrayal when  
11 the doors that are open for students at secular  
12 institutions or public institutions get closed on  
13 them?

14 MS. SNYDER: Objection. Outside the  
15 topics in the 30(b)(6) notice -- or outside the  
16 scope of the topics in the 30(b)(6) notice.

17 Additionally, speculative and argumentative.

18 If -- you can answer in your personal  
19 capacity if you are able.

20 THE WITNESS: As I've said in response  
21 to previous -- similar previous questions, I'm  
22 not going to speculate on how students feel or

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<p>1 what their thinking is about OCR. 2 It would -- it is likely that whatever 3 frustration or however students felt, however 4 LGBTQ students felt about this particular aspect 5 of Title IX religious exemptions piece was shared 6 during the course of the recent hearings that we 7 had on the proposed new Title IX regulations. I 8 would hope so. But I am not going to speculate 9 and say, yes, I'm sure that's how they feel or, 10 no, I'm sure that's -- or I'm sure they don't 11 feel that way. 12 MR. SOUTHWICK: All right. Why don't 13 we take a little ten-minute break here. 14 THE WITNESS: Sure. 15 MS. SNYDER: Paul, do you have a sense 16 of kind of where you are as far as timing? 17 MR. SOUTHWICK: We talked about -- 18 yeah. We won't be going past 6:30 your time. 19 Do the intervenors plan on asking any 20 questions, or no? We didn't really discuss that. 21 MR. SCHAERR: Yes, I -- I think we'd 22 like to ask just a very few questions.</p>	<p>1 exercise the right to read and sign. I just 2 wanted to make sure I got it on the record and 3 didn't forget. Thank you. 4 MR. SOUTHWICK: No problem. 5 BY MR. SOUTHWICK 6 Q Mr. Wills, I'd like to go back to the 7 OCR Processing Manual a little bit. Let's see 8 here. I've got to remember which number that one 9 is. 10 A Three. 11 Q Three. Thank you. All right. 12 Mr. Wills, it's my understanding that 13 anyone can really file a Title IX complaint with 14 OCR. You don't have to be a current student or 15 even necessarily directly connected to the 16 institution in order to file a complaint; is that 17 correct? 18 A That is correct. 19 Q But if you're going to file a 20 complaint, then you need to file it on behalf of 21 someone or on behalf of a group; is that correct? 22 A That's correct.</p>
<p>Page 206</p> <p>1 MS. SNYDER: I'm sure I'm going to have 2 some follow-up, too, so just for your 3 information. 4 MR. SOUTHWICK: Okay. Yeah. I think, 5 you know, I'll -- yeah, I think I will go another 6 hour or so, and then we can probably turn it over 7 to the rest of you. 8 MS. SNYDER: Thank you for the update. 9 MR. SOUTHWICK: Okay. 10 VIDEO TECHNICIAN: Is it okay to go off 11 the record at this time? 12 MR. SOUTHWICK: Yes, please. 13 VIDEO TECHNICIAN: We are going off the 14 record at 3:26. 15 (Recess 3:26 p.m. to 3:50 p.m.) 16 VIDEO TECHNICIAN: We are back on the 17 record. The time is 3:50. Please proceed. 18 MS. SNYDER: Paul, may I -- may I 19 quickly say something so as not to forget? We 20 are going to -- 21 MR. SOUTHWICK: Sure. 22 MS. SNYDER: The witness is going to</p>	<p>Page 208</p> <p>1 Q So in a situation where -- looking at 2 some of the Title IX complaints that we've got in 3 our Exhibit 2, some of those were filed by alumni 4 of some of these educational institutions, and 5 while they experienced some discrimination 6 themselves, some of that was a while ago. But 7 their complaints also complain about the current 8 policies at some of these educational 9 institutions and the impact that those policies 10 have on the LGBTQ+ students at those schools. 11 So my question to you is: Is it within 12 the subject matter jurisdiction of OCR to 13 evaluate a complaint when someone like an alum 14 submits a Title IX complaint on behalf of a group 15 of current students who are part of a 16 historically marginalized group? 17 MS. SNYDER: Objection. Outside the 18 scope of the 30(b)(6) topics and potentially 19 speculative. You -- you -- and you can answer in 20 your personal -- 21 THE WITNESS: Please repeat -- 22 MS. SNYDER: -- capacity if you can.</p>

1 THE WITNESS: Please repeat the  
2 question. I got a statement out of that, but I  
3 didn't hear the question.

4 BY MR. SOUTHWICK

5 Q Sure. My question is: Will OCR accept  
6 a complaint, Title IX complaint, that alleges  
7 sexual orientation discrimination under Title IX,  
8 but not against the complainant themselves, but  
9 against a group of LGBTQ+ students at a  
10 particular educational institution?

11 Is that a complaint that OCR would  
12 accept, or would it reject that type of a  
13 complaint?

14 MS. SNYDER: Objection. Outside the  
15 topics -- the scope of the topics in the 30(b)(6)  
16 deposition. It's also potentially speculative  
17 and ambiguous.

18 And you can answer in your personal  
19 capacity if you can.

20 THE WITNESS: I understand. First  
21 observation is, we don't use the verbs accept and  
22 reject in OCR. They're not -- those are not

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1 Q That's correct. Yeah. And it should  
2 be a one-pager that's got three columns,  
3 recipient, assurance of religious exemption  
4 letter, and plaintiff.

5 Do you see that?

6 A I see that.

7 Q All right. So we were just presented  
8 with this document today. Is this a document  
9 that you reviewed in preparation for your  
10 deposition?

11 A Yes, it is.

12 Q And can you tell me what this document  
13 is?

14 A This document is a listing of recipient  
15 institutions, and it contains -- I didn't count  
16 however many there are there, but a listing of  
17 recipient institutions.

18 It also indicates whether that  
19 particular recipient institution has an assurance  
20 of religious exemption letter. And it also names  
21 the plaintiff associated with that particular  
22 institution or the --

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1 verbs that we use in our practice.

2 The complaint that you just described  
3 or any complaints similar to what you just  
4 described can be filed with OCR. We use the term  
5 filed. They certainly can be filed.

6 They will be evaluated, as are all  
7 complaints, and a determination will be made as a  
8 result of the evaluation as to whether we should  
9 go forward and open the complaint for  
10 investigation or whether the complaint should be  
11 dismissed. But they can certainly be filed.

12 BY MR. SOUTHWICK

13 Q All right. I want to ask a question  
14 about a document that was produced to us this  
15 morning. We're trying to get it uploaded on  
16 Exhibit Share, but struggling here with that.  
17 It's part of topic 2.2 PDF. The Bates number I  
18 can give you is ED2.000241. And on the table of  
19 contents, it's topic 2K, school list. We're  
20 trying to get it on Exhibit Share, but if you've  
21 got it in paper, you can start --

22 A ED2.000241. Yes.

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1 Q And --

2 A -- plaintiffs.

3 Q And what is the purpose of this  
4 document?

5 MS. SNYDER: Objection. Vague.  
6 Ambiguous.

7 THE WITNESS: I'm not going to  
8 speculate as to the purpose of the document that  
9 I wasn't part of drafting, but I take from the  
10 reading of the document on its face that it --  
11 what it tells me is that, for example, Baylor  
12 University has -- on record, there is a record of  
13 Baylor having received an assurance of religious  
14 exemption letter.

15 And -- and this is an inference on my  
16 part, but the listing of the plaintiffs,  
17 Tidwell-Davis, Picker and Penales, suggests to me  
18 that they may also be complainants in an  
19 administrative proceeding, an administrative  
20 complaint before OCR.

21 BY MR. SOUTHWICK

22 Q Do you know if this document is being

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1 used to guide any of the OCR staff who are  
2 evaluating the complaints that are part of  
3 Exhibit 2?

4 A I do not know that.

5 Q And then referring back to our  
6 discussion earlier today, would it be fair to say  
7 that if one of the plaintiffs listed on this --  
8 oh, sorry. Let me stop. We have uploaded now as  
9 Exhibit 12 this document in Exhibit Share,  
10 introducing it as Exhibit 12.

11 (Deposition Exhibit Number 12  
12 was marked for identification.)

13 BY MR. SOUTHWICK

14 Q So I guess I'll just start with the  
15 first one there, the Azusa Pacific University.  
16 No exemption assurance letter. Plaintiff is  
17 Jonathan Jones.

18 So assuming Jonathan Jones otherwise  
19 stated a Title IX complaint that was timely and  
20 within the subject matter jurisdiction of OCR, my  
21 understanding based on our earlier conversations  
22 is that because Azusa Pacific University does not

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1 today. If there is that level of awareness, then  
2 that is -- then what you described is accurate.

3 Q All right. I uploaded in -- I uploaded  
4 into the marked exhibits Nos. 10 and 11. We can  
5 go ahead and open up Exhibit 10 first. I'll --

6 (Deposition Exhibit Number 10  
7 was marked for identification.)

8 THE WITNESS: I've opened it.

9 BY MR. SOUTHWICK

10 Q Okay. I'll represent to you that  
11 Exhibit 10 is a document from Baylor University.  
12 It says student policies and procedures, and it  
13 provides a statement on human sexuality.

14 I'd ask: Can you read the first  
15 paragraph there?

16 A Yes.

17 "Baylor University welcomes all  
18 students into a safe and supportive environment  
19 in which to discuss and learn about a variety of  
20 issues, including those of human sexuality. The  
21 University affirms the biblical understanding of  
22 sexuality as a gift from God. Christian churches

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1 have an assurance of religious exemption letter,  
2 OCR would open up an investigation and then allow  
3 Azusa Pacific University the opportunity to  
4 assert a religious exemption before having to  
5 comply with other aspects of the investigation;  
6 is that correct?

7 A That is correct, yes.

8 Q However, looking at the second one,  
9 which is Baylor University, because Baylor  
10 University already has an assurance of religious  
11 exemption letter, OCR -- to the extent it had to  
12 get there, OCR would review that assurance of  
13 religious exemption letter, and the complaint  
14 could be dismissed right then and there without  
15 opening up an investigation if OCR determines  
16 that the complaint comes within the assurance  
17 letter. Is that accurate?

18 A That is accurate to the extent that the  
19 investigative staff in the regional office was  
20 aware that this was an institution that had in  
21 its possession an assurance of religious  
22 exemption, which is what I described earlier

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1 across the ages and around the world have  
2 affirmed purity in singleness and fidelity in  
3 marriage between a man and a woman as the  
4 biblical norm. Temptations to deviate from this  
5 norm include both heterosexual sex outside of  
6 marriage and homosexual behavior. It is thus  
7 expected that Baylor students will not  
8 participate in advocacy groups which promote  
9 understandings of sexuality that are contrary to  
10 biblical teaching."

11 Q Have you reviewed any policies on human  
12 sexuality like this at educational institutions  
13 like Baylor? Have you seen any of these kinds of  
14 policies before?

15 MS. SNYDER: Objection. Outside the  
16 scope of the 30(b)(6) deposition.

17 You can answer in your personal  
18 capacity if you're able.

19 BY MR. SOUTHWICK

20 Q Let me -- then let me back up and lay  
21 some foundation here. So Baylor University is  
22 one of the universities at issue in three of the

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55 (Pages 214 - 217)

1 complaints that are the subject of this  
2 deposition. That would be Justin Tidwell-Davis,  
3 Jake Picker and Veronica Penales. And the  
4 policies are relevant to OCR analysis; isn't that  
5 correct?

6 You don't have to wait for your lawyer  
7 to give you an indication.

8 A Okay. Well, there were two questions.  
9 First, have I reviewed -- have I seen a policy  
10 like this before, and is this policy germane to  
11 OCR's analysis?

12 I have not seen this policy or any one  
13 like it before that articulated what I just read  
14 to you. And this would be information that we  
15 would consider in the evaluation of a complaint.

16 Q This kind of policy --

17 A Evaluation -- excuse me. I can correct  
18 myself. I said we consider this information in  
19 the evaluation of a complaint. It may come as  
20 part of a complaint. It may be an attachment to  
21 a complaint. It certainly would be taken into  
22 consideration as we take -- as we take into

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1 capacity if you know.

2 THE WITNESS: I cannot give a  
3 definitive answer to that question. It's --  
4 there's a distinct possibility that it would be  
5 problematic, but I can't give you a definitive  
6 answer to that. There are a lot of  
7 considerations and discussions that we would --  
8 we have around policies that on their face are  
9 problematic, but -- so I can't give you  
10 a definitive yes on that question.

11 MR. SOUTHWICK: All right. If we could  
12 look at Exhibit No. 11. I'll represent to you  
13 that this is the Bob Jones University Student  
14 Handbook for the current academic year, 2021 to  
15 2022.

16 (Deposition Exhibit Number 11  
17 was marked for identification.)

18 BY MR. SOUTHWICK

19 Q I don't know of a fast way to jump  
20 through this, but, basically, if you can scroll  
21 down or toggle down to page 51. And then just  
22 let me know when you've got there. And you might

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1 consideration any attachments that complainants  
2 bring to us in a complaint. So, yes, as part of  
3 that process, but I can't speak for what PLG  
4 would do if this were to accompany a request for  
5 assurance of a religious exemption.

6 Q Would a policy like this which  
7 prohibits homosexual behavior or advocacy for  
8 homosexual behavior, if this were not at a  
9 religious educational institution, would a policy  
10 like this be in violation of OCR regulations  
11 against sexual orientation and gender identity  
12 discrimination?

13 MS. SNYDER: I'm sorry. Paul, could  
14 you repeat the question?

15 MR. SOUTHWICK: Could the court  
16 reporter read the question back for us?

17 (Whereupon, the reporter read the  
18 record as requested.)

19 MS. SNYDER: Objection. That's outside  
20 the scope of the 30(b)(6) notice or the -- the  
21 scope of the topics in the 30(b)(6) notice.

22 You can answer in your personal

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1 need to use the magnifying glass to make it a  
2 little bigger to read, at least I do. And what  
3 I'm looking for on page 51 is the position on  
4 human sexuality.

5 A I have found it.

6 Q All right. Could you please read the  
7 position on human sexuality at Bob Jones  
8 University?

9 A "The New Testament exhorts believers to  
10 strive to live morally pure and sexually  
11 undefiled lives even in the midst of an immoral  
12 and sexually permissive culture," with a  
13 citations to the New Testament, 1 Thessalonians  
14 4:1-9.

15 "This biblical mandate stands behind  
16 our desire to create and cultivate a culture that  
17 promotes and protects healthy relationships. In  
18 line with the scriptural teaching on sexual  
19 morality and the reality that students face many  
20 types of sexual temptation, we wish to encourage  
21 single students to live holy lives, abstaining  
22 from all sexual relationships, and married

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1 students to be faithful in marriage and to their  
2 spouse. Therefore, any sexual activity outside  
3 the context of a biblically defined marriage  
4 between one man and one woman is prohibited."

5 Q And if you could --

6 A Additionally --

7 Q -- continue on.

8 A I'm continuing. I'm sorry.

9 "Additionally, any sexual behavior that  
10 is inconsistent with these standards -- including  
11 sexual intercourse, other sexually intimate forms  
12 of touching and sexual communication in written,  
13 verbal or visual form -- is prohibited even when  
14 consensual."

15 "Consistent with our commitment to  
16 God's design for gender identity, the public  
17 advocacy for or act of altering one's biological  
18 sex through medical transition or transgender  
19 expression is prohibited. Any same-sex dating or  
20 advocacy for such is also prohibited. BJU's  
21 perspective on gender identity also applied to --  
22 but is not limited to -- the use of bathrooms,

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1 was not a religious educational institution,  
2 would you agree that this kind of a policy would  
3 be in violation of OCR's regulations  
4 preventing -- or prohibiting sexual orientation  
5 and gender identity discrimination?

6 MS. SNYDER: Objection. You are  
7 outside the topics of the -- of the scope of the  
8 30(b)(6) deposition.

9 You can answer the question in your  
10 personal capacity if you're able.

11 THE WITNESS: Based on my personal  
12 capacity and -- and knowledge, the policy and --  
13 and the implementation of the policy would  
14 violate our interpretation of the prohibition on  
15 sex discrimination in the -- this was made clear  
16 several years ago by the administration -- by the  
17 Obama administration.

18 BY MR. SOUTHWICK

19 Q And then again more recently by the  
20 Biden --

21 A Again --

22 (Inaudible crosstalk.)

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1 locker rooms, student housing, attire policies  
2 and participating in sex-specific university  
3 groups, clubs and organizations."

4 "A fuller statement of BJU's position  
5 on human sexuality and gender identity can be  
6 found in Appendix B. We realize that these  
7 issues are increasingly complicated ones with  
8 which many believers struggle, and we want to be  
9 a help to any students who need and desire help.  
10 The Student Life and Student Care staff are  
11 available to meet with students who are  
12 struggling."

13 Q Thank you. Now I want to ask you  
14 about -- specifically about paragraph 3, which  
15 talks about gender identity and has pretty clear  
16 prohibitions on medical transition, transgender  
17 expression, same-sex dating or advocacy for  
18 same-sex dating and also clearly states that  
19 transgender students are not allowed to use  
20 bathrooms, locker rooms, housing or attire that  
21 is inconsistent with their biological birth sex.

22 Now, assuming that Bob Jones University

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1 Q -- administration, correct?  
2 I do want to go back to the -- I  
3 appreciate your answer. However, you do  
4 recognize or agree that one of the plaintiffs in  
5 this litigation and a plaintiff who has filed a  
6 Title IX administrative complaint did so against  
7 Bob Jones University; is that correct?

8 The lead plaintiff, Elizabeth Hunter,  
9 filed a Title IX complaint against Bob Jones  
10 University; is that correct? You can look at the  
11 list on Exhibit 2.

12 A Yes. I see Elizabeth Hunter has filed  
13 a complaint against Bob Jones University. Yes.  
14 11212234. Yes.

15 Q And so Bob Jones University's policies  
16 with respect to sexual orientation or gender  
17 identity would be relevant to OCR's analysis of  
18 that complaint; isn't that right?

19 A Yes. This would -- if this were  
20 submitted with a complaint, yes, we would -- we  
21 would certainly consider this in the evaluation  
22 of the complaint at the enforcement level. I'm

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<p>1 not speaking about a consideration of this as 2 part of a process of seeking an assurance of 3 religious exemption, which is handled by program 4 legal group.</p> <p>5 MR. SOUTHWICK: Let's -- if we can just 6 go off the record for a minute or two, I think 7 I'm about to wrap up, but I'd just like to 8 consult with my counsel over here. We're almost 9 done with our part.</p> <p>10 MS. SNYDER: Take your time.</p> <p>11 VIDEO TECHNICIAN: We are going off the 12 record at 4:17.</p> <p>13 (Recess 4:17 p.m. to 4:33 p.m.)</p> <p>14 VIDEO TECHNICIAN: We are back on the 15 record. The time is 4:33. Please proceed.</p> <p>16 THE WITNESS: Mr. Southwick, before we 17 proceed, I would like, if you will -- there was a 18 question you posed to me earlier in the day that 19 I was at the time unable to answer, and it was a 20 question with respect to Bob Jones University and 21 Colorado Christian College. The question was 22 about the -- the basis for granting an exemption</p>	<p>1 I just wanted to pose that as my answer 2 at this point. Thank you.</p> <p>3 VIDEO TECHNICIAN: And, Mr. Wills, this 4 is the Lori, the videographer, and I believe 5 you're hitting the microphone a little bit, so 6 just FYI. Thank you.</p> <p>7 THE WITNESS: I'm sorry.</p> <p>8 VIDEO TECHNICIAN: Thank you.</p> <p>9 BY MR. SOUTHWICK</p> <p>10 Q All right, Mr. Wills. I'm almost done 11 with my questioning for today. Thank you for 12 your time today. I've just got a few to wrap up.</p> <p>13 I did want to look at the OCR -- excuse 14 me -- the OCR Processing Manual again, which is 15 Exhibit 3, and I wanted to ask specifically about 16 Section 109, First Amendment Principles. Just 17 let me know when you've been able to locate that.</p> <p>18 A I've located it.</p> <p>19 Q All right. There's a paragraph there. 20 I've read it a few times. I'm not quite sure 21 what it means, and I was just wondering if you 22 might be able to explain what does it mean that</p>
<p>Page 226</p> <p>1 when there was no outside religious organization 2 that either of those institutions pointed to as 3 controlling.</p> <p>4 And I was unable to answer the question 5 at the time, but I'd like to offer an answer at 6 this point, and that is that determination and, 7 also, the basis for subsection 4 in the 8 November 2020 regulation is drawn from the Smith 9 memorandum from 1989 and -- which is found -- the 10 particular section is found on page 2 of that 11 memorandum, ED2.000077.</p> <p>12 Subsection 1, which states that a 13 doctrinal statement with a notation that specific 14 members of the institution community must espouse 15 a personal belief in the religion or doctrinal 16 statement, hyphen -- or dash -- this is 17 sufficient evidence that the institution is, 18 quote-unquote -- quote, controlled, unquote, by a 19 religious organization under 106.12(a) for 20 purposes of claiming a religious exemption, a 21 reference to see tab B, page 4 of the 22 February 19, 1985 guidance.</p>	<p>Page 228</p> <p>1 OCR does not have jurisdiction to enforce the 2 First Amendment to the Constitution, but 3 throughout the process will interpret its 4 statutes and regulations consistent with the 5 requirements of the First Amendment.</p> <p>6 To the extent you can, maybe if you can 7 just kind of clarify what -- what all this means.</p> <p>8 MS. SNYDER: Okay. I'm going to object 9 to the question as outside the topics -- outside 10 the scope of the topics in the Rule 30(b)(6) 11 notice. You can answer in your personal capacity 12 if you're able.</p> <p>13 THE WITNESS: Thank you. In my 14 personal capacity, this provision of the Case 15 Processing Manual is a recent addition. It was 16 inserted into the Case Processing -- Case 17 Processing Manual in the August 2020 iteration. 18 To the extent that I have any knowledge about 19 this, I'll share that with you.</p> <p>20 The first sentence is in there to 21 indicate that we do not handle complaints that 22 come to us with allegations that my First</p> <p>Page 229</p>

<p>1 Amendment rights have been violated, which would 2 call upon us to exercise jurisdiction that we do 3 not have, which is to interpret the First 4 Amendment and determine whether a particular 5 student's rights have been violated under the 6 First Amendment.</p> <p>7 My understanding of the second portion 8 of this, OCR -- "all actions taken by OCR must 9 comport with First Amendment principles," my 10 understanding of that is that OCR would not, for 11 example, require a recipient to enter into a 12 resolution agreement that contains a provision 13 perhaps with regard to harassment and -- certain 14 kinds of verbal harassment that would arguably 15 violate or impinge upon a student's First 16 Amendment rights.</p> <p>17 But I have no further elucidation I can 18 provide as to the meaning of that particular 19 section.</p> <p>20 BY MR. SOUTHWICK</p> <p>21 Q Mr. Wills, are you aware that in this 22 litigation that this deposition is a part of that</p>	<p>1 speculative and ambiguous. 2 You can answer in your personal 3 capacity if you are able. 4 THE WITNESS: Mr. Southwick, if I can 5 reiterate -- you're asking me if -- if an 6 injunction were granted prohibiting OCR from 7 either issuing assurances or using assurances of 8 religious exemptions in -- in analyzing cases 9 going forward, if that preliminary injunction 10 were granted, would OCR proceed with an 11 investigation? 12 MS. SNYDER: Okay. Again, just for the 13 record, objection. It's speculative. It's 14 ambiguous, and it's outside the scope of the 15 topics in the Rule 30(b)(6) deposition. 16 You can answer in your personal 17 capacity if you're able. 18 THE WITNESS: I really can't answer 19 that, because I don't know what the decision 20 would be with regard to moving past the 21 preliminary injunction. I simply don't know what 22 the answer would be.</p>
<p>1 there is a motion -- there is a preliminary 2 injunction hearing scheduled for November 4th and 3 5th in this case relating to the processing of 4 these Title IX complaints? Are you generally 5 aware of that? 6 A I'm generally aware of that; however, 7 with not much specificity. 8 Q Part of the request for relief, 9 plaintiffs are asking for a declaration from the 10 judge instructing OCR to not enforce the Title IX 11 religious exemption with respect to the 12 complaints that are part of Exhibit 2. 13 To the extent that the plaintiffs are 14 successful in obtaining such a order from the 15 Court, my question is, you know, what would 16 happen with respect to these Title IX complaints? 17 Would they be processed similar to other 18 complaints, then, just following the regular OCR 19 Processing Manual guidelines? 20 MS. SNYDER: Objection. The question 21 goes outside the scope of the topics in the Rule 22 30(b)(6) deposition. Additionally, it is</p>	<p>1 BY MR. SOUTHWICK 2 Q Well, what I'm really -- what I'm 3 really getting at, I guess, is: If OCR does open 4 up investigations and it makes a finding that 5 there had been a violation, according to the 6 Processing Manual, there -- there are a few tools 7 in OCR's tool belt that it can use in order to 8 come to a resolution with the educational 9 institution; is that correct? 10 A That is correct. 11 Q And what would be the most common form 12 of resolution when there's -- when -- when a 13 complaint has been properly stated and OCR is 14 going to do some kind of enforcement? What's the 15 most common enforcement action? 16 A If OCR continues with an investigation 17 and during the course of that investigation, in 18 its review of evidence during the course of that 19 investigation, has -- has not yet made a finding 20 of violation, doesn't have enough evidence yet to 21 state definitively that there has been a 22 violation of law, but has concerns -- and we use</p>

1 the term concerns very deliberately. We have not  
2 yet found a violation, but we have concerns. We  
3 think there are problems that we need to address.  
4 That is the most -- and we've -- we've gotten a  
5 request from the recipient institution to resolve  
6 the case.

7 If we think that's appropriate to  
8 resolve, we will ask the institution to enter  
9 into a resolution agreement prior to the  
10 conclusion of the investigation and a finding of  
11 violation to address the concerns that we have  
12 seen in our review of the evidence that we've  
13 obtained in the case.

14 That is OCR's most frequent type of  
15 resolution agreement. We have many more of those  
16 than we do resolution agreements that address  
17 violations that we found as a result of a  
18 complete investigation. We have a number of  
19 agreements that actually address both, where we  
20 have found violations and we have concerns about  
21 other portions of what we've seen, but for the  
22 most part, talking about resolution agreements

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1 resolving cases, that is a type of resolution, as  
2 are resolutions with a grievance and violation  
3 findings.

4 Other types of resolutions include  
5 dismissals. We may learn in the course of an  
6 investigation, for example, that a particular  
7 complainant has determined to file a case  
8 alleging the same operative facts or similar  
9 operative facts in court, and we would certainly  
10 dismiss at that point as well.

11 So we have dismissal -- dismissal  
12 options as resolution types, insufficient  
13 evidence findings resolution types, prior to  
14 conclusion of an investigation, after the  
15 investigation is concluded.

16 We also have available, again, if OCR  
17 deems it appropriate, what's denominated in the  
18 Case Processing Manual as facilitated resolution  
19 between the parties, generally not available in  
20 complex cases, but there are any number of cases,  
21 present single-issue cases where the parties are  
22 actually interested in resolving the matter

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1 with recipients, the agreements that I first  
2 described that we enter into prior to the  
3 conclusion of an investigation that we think is  
4 appropriate, that the recipient has asked for,  
5 that is our most frequently used type of  
6 resolution.

7 And those resolution agreements are  
8 monitored by OCR with -- in exactly the same way  
9 that resolution agreements where we found  
10 violations are.

11 Q Okay. So there's resolution agreements  
12 prior to a finding of violation, and that's the  
13 most common. And then there can also be  
14 resolution agreements after a finding of  
15 violation.

16 What other kinds of enforcement actions  
17 does OCR take?

18 A Well, we can also at the -- at the  
19 conclusion of an investigation make a finding of  
20 insufficient evidence to support a conclusion  
21 that there's been a violation of law. That is  
22 certainly one of the actions we take. In

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1 themselves, most frequently used in a disability  
2 context. We act in those circumstances as a  
3 mediator. The parties work out an agreement of  
4 their own. OCR does not monitor that agreement.  
5 So that's -- that's one further resolution option  
6 available from the CPM.

7 Q And if OCR and the educational  
8 institution are not able to reach a resolution  
9 agreement after a finding of violation, what  
10 enforcement options are available to OCR at that  
11 point?

12 A The enforcement options available,  
13 if after attempts to negotiate a resolution  
14 agreement fail, there are a number of interim  
15 procedural steps we take. We issue a letter of  
16 impasse.

17 If that letter is unsuccessful in  
18 bringing the -- bringing the recipient into an  
19 agreement, we will issue a letter of impending  
20 enforcement action, which is one more step in the  
21 process indicating that, again, these are the  
22 efforts we've made. These are the violations

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60 (Pages 234 - 237)

1 we've found. You've -- we rehearse all of the  
2 efforts we've made to -- to resolve the agreement  
3 and inform the recipient at that point that  
4 failure to enter into an agreement within a  
5 certain specified time frame that can vary from  
6 case to case that we will take enforcement  
7 action.

8 Enforcement action can take one of two  
9 forms for OCR. We can take administrative  
10 enforcement action, which means we would  
11 basically take the case to the Office of Hearings  
12 and Appeals in the Department of Education and,  
13 basically, in an administrative forum, relitigate  
14 the case from the beginning.

15 We can also -- also have the option to  
16 refer the matter to the Department of Justice for  
17 whatever action they may elect to take to enforce  
18 the rights that we've identified that have been  
19 violated.

20 Q And so those -- all those different  
21 options, those would be exhausted before the  
22 federal financial assistance would ever be

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1 experience at OCR, that has not been the case.  
2 There's been no withdrawal -- withdrawal of  
3 funds.

4 MR. SOUTHWICK: Thank you, Mr. Wills --  
5 THE WITNESS: That's to the best -- to  
6 my knowledge.

7 MR. SOUTHWICK: Thank you, Mr. Wills.  
8 I appreciate your time today. I don't have any  
9 questions at this time. However, other attorneys  
10 are likely to be asking you questions, and I  
11 might do some follow-up after they're done  
12 depending on the nature of their questioning.

13 And I will also just note that this was  
14 a 30(b)(6) deposition for three limited topics  
15 for the purpose of obtaining evidence in advance  
16 of the preliminary injunction hearing, and so  
17 plaintiffs reserve their right to keep the  
18 deposition open with respect to other topics as  
19 discovery proceeds to the extent the Court allows  
20 and also will keep the deposition open to the  
21 extent that the witness was unable to respond to  
22 questions due to lack of preparation.

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1 withdrawn from an educational institution; is  
2 that accurate?

3 A That is accurate.

4 MS. SNYDER: Objection.

5 THE WITNESS: Sorry.

6 MS. SNYDER: You're outside the scope  
7 of the topics in the deposition notice.

8 If you know the answer, you can answer  
9 in your personal capacity.

10 THE WITNESS: Yes, that -- that is  
11 accurate.

12 BY MR. SOUTHWICK

13 Q And to your knowledge, has OCR or the  
14 Department of Justice ever withheld federal  
15 financial assistance as a result of an OCR  
16 finding of a violation?

17 MS. SNYDER: Objection. Outside the  
18 scope of the topics listed in the 30(b)(6)  
19 notice.

20 You can answer in -- in your personal  
21 capacity if you're able.

22 THE WITNESS: To my knowledge and in my

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1 With that, nothing further from  
2 plaintiffs at this time.

3 MS. SNYDER: Why don't the intervenors  
4 go ahead and ask their questions first, if that's  
5 okay, and then -- and then we may have some  
6 follow-up questions on our end.

7 MR. SCHAERR: Mark -- Mark or Ryan,  
8 does one of you want to go first, or shall I go?

9 MR. LIPPELMANN: You can go first,  
10 Gene.

11 MR. SCHAERR: All right. Well, hello,  
12 Mr. Wills. I am -- I am Gene Schaerr, and I'm  
13 representing the intervenor, Council on Christian  
14 Colleges & Universities.

15 VIDEO TECHNICIAN: Counsel, your audio  
16 is breaking up.

17 MR. SCHAERR: I'm sorry. Let me see if  
18 I can -- (inaudible) if that's all right and see  
19 if that helps. Can you hear me better now?

20 VIDEO TECHNICIAN: Yes.

21 THE WITNESS: Yes, I can.

22 MR. SCHAERR: All right. Sorry about

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1 that. I had -- I thought I had a strong Internet  
2 connection here.  
3 EXAMINATION BY COUNSEL FOR  
4 DEFENDANT-INTERVENOR COUNCIL FOR  
5 CHRISTIAN COLLEGES & UNIVERSITIES  
6 BY MR. SCHAERR

7 Q Anyway, Mr. Wills, thank you for being  
8 with us today, and thank you for all the time  
9 that you've already devoted to this process.

10 To your knowledge, has the Department  
11 or OCR ever instructed religious schools to enact  
12 policies related to human sexuality?

13 MS. SNYDER: I'm going to object. It's  
14 outside the scope of the topics enumerated in the  
15 deposition notice.

16 You can answer the question in your  
17 personal capacity if you're able.

18 THE WITNESS: To my knowledge, OCR has  
19 never instructed -- instructed a religious  
20 institution to institute any policies with regard  
21 to human sexuality.

22

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1 MR. SCHAERR: Okay. And I -- you know,  
2 my -- some of my questions are -- you -- as you  
3 point out, are not within the scope of the three  
4 topics in the 30(b)(6) notice, but they are  
5 within the scope of the questions asked by  
6 plaintiff's counsel, so that's why I'm asking  
7 them.

8 BY MR. SCHAERR

9 Q Does the Department or OCR have a  
10 process for reviewing or approving policies on  
11 human sexuality or gender drafted by religious  
12 schools?

13 MS. SNYDER: Again, objection. Outside  
14 the scope of the topics.

15 You can answer in your personal  
16 capacity if you're able.

17 THE WITNESS: To my knowledge, there is  
18 no -- OCR does not have an approval process  
19 whereby an institution would submit a policy to  
20 OCR for approval.

21 BY MR. SCHAERR

22 Q And to your knowledge, has the

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1 BY MR. SCHAERR

2 Q Okay. To your knowledge, has the  
3 Department or OCR ever assisted a religious  
4 school in drafting a policy on human sexuality or  
5 gender?

6 MS. SNYDER: Again, I'm going to  
7 object. The matters are outside the scope of the  
8 30(b)(6) notice.

9 You can answer in your personal  
10 capacity if you're able.

11 THE WITNESS: To my knowledge, OCR has  
12 never engaged in such assistance.

13 MR. SOUTHWICK: Counsel, I wonder if it  
14 makes sense for us to give you a standing  
15 objection on the ground that you've just  
16 articulated.

17 MS. SNYDER: I -- I don't -- I'm not  
18 sure that that's -- I like the idea of the  
19 efficiency, but I'm not sure that's going to cut  
20 it if it -- if there's actually a dispute about  
21 this. So I think I'm going to have to keep doing  
22 it. I'm sorry.

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1 Department ever encouraged any religious school  
2 to discriminate against or otherwise -- or  
3 otherwise mistreat any member of the LGBTQ  
4 community?

5 MS. SNYDER: Again, objection. It's  
6 outside the scope of the topics listed in the  
7 Rule 30(b)(6) deposition.

8 You can answer that question in your  
9 personal capacity if you're able.

10 THE WITNESS: To my knowledge, OCR has  
11 never encouraged under any circumstances that an  
12 institution mistreat LGBTQ+ students.

13 BY MR. SCHAERR

14 Q Or discriminate against them?

15 MS. SNYDER: Same objection.

16 Again, you can answer in your personal  
17 capacity if you're able.

18 THE WITNESS: To my knowledge, OCR has  
19 never encouraged a religious institution to  
20 discriminate against LGBTQ+ students.

21 BY MR. SCHAERR

22 Q Okay. Now, when deciding whether the

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1 religious exemption applies in a given case, what  
2 does OCR review?

3 A I believe I articulated this earlier,  
4 but I'll repeat that the -- that the review,  
5 first of all, is conducted by OCR's program legal  
6 group, which is not the same, obviously, as the  
7 enforcement group. I'm a deputy assistant  
8 secretary for enforcement.

9 But PLG, whenever -- when a request for  
10 issuance of an assurance of religious exemption  
11 is received by headquarters, the request is  
12 forwarded to the -- to our Title IX team and the  
13 program legal group. The program legal group  
14 reviews the request.

15 If the program legal group determines  
16 that additional information is necessary in order  
17 to make a recommendation as to a determination on  
18 the request, the program legal group will make  
19 that request to -- they will make that known to  
20 the deputy assistant secretary for policy, who's  
21 the head of the program legal group, and to the  
22 assistant secretary.

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1 send it to the recipient -- to the -- to the  
2 religious institution, the recipient institution.

3 Q Thank you. And as part of that  
4 approval process, I gather that -- that OCR  
5 reviews the institution's religious beliefs and  
6 tenets to the extent that they're relevant to the  
7 exemption, right?

8 A Counsel, when you say reviews the  
9 religious beliefs, I want to draw your attention  
10 to -- in answering that question, I want to draw  
11 your attention to an exhibit in the binder. This  
12 is the Singleton memo.

13 I'm looking at ED2.000048. I just want  
14 to call your attention to the statement in the  
15 first paragraph under tenets. "OCR cannot  
16 question what institutional representatives claim  
17 as their beliefs."

18 So there is a review, yes, but under  
19 these circumstances. It's not questioning. It's  
20 not delving into them at that level, at the  
21 initial request for an assurance level.

22 Q Okay. Does -- in your experience or  
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1 And based on the assistant secretary's  
2 decision in collaboration with the deputy  
3 assistant secretary for policy, the assistant  
4 secretary may at that point say, yes, I agree you  
5 need additional information, and a letter  
6 requesting the additional information should  
7 issue. Currently, the practice is that that  
8 letter will issue over the signature of the  
9 deputy assistant secretary for policy.

10 Once that additional information is  
11 received, assuming it's sufficient for the PLG  
12 group to make a determination, the group -- the  
13 attorneys in the PLG group will draft a letter  
14 for signature by the assistant secretary. In --  
15 in all the cases I've ever experienced, the  
16 letter will recommend to the acting assistant  
17 secretary, the assistant secretary, that the  
18 assurance of a religious exemption or exemptions  
19 issue.

20 If upon review of that letter the  
21 assistant secretary agrees with the analysis and  
22 conclusion, he or she will sign the letter and

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1 observation, does OCR ever question the sincerity  
2 of the asserted religious beliefs or tenets?

3 A In my experience, I don't believe that  
4 there's ever been a time when they've questioned  
5 the -- OCR has questioned the sincerity of  
6 beliefs or tenets of a religious institution that  
7 is seeking an assurance of religious exemption.

8 Q Okay. And to your knowledge, has OCR  
9 ever denied an application for a religious  
10 exemption because a religious school failed to  
11 provide adequate documentation of its beliefs?

12 MS. SNYDER: Objection. I believe that  
13 goes beyond the scope of the 30(b)(6) deposition  
14 topics.

15 You can answer in your personal  
16 capacity if you're able.

17 THE WITNESS: I don't know that -- that  
18 OCR has ever denied a religious institution  
19 because it has not provided sufficient  
20 information.

21 I believe that what I just described to  
22 you in terms of the program legal group needing

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<p>1 additional information and making a request 2 approved by the assistant secretary for that 3 information indicates that OCR would attempt to 4 get that information. 5 If it were incomplete, I -- I don't 6 know of any situation where OCR has denied a 7 request even -- denied a request for an assurance 8 of exemption after it's sought information and 9 hasn't received exactly what it needs. It's my 10 understanding that reaching out again is 11 sufficient. They frequently get the information 12 they need, and PLG can move forward. 13 BY MR. SCHAEERR 14 Q Okay. Now, a couple of times in its 15 briefing in this case, the Department has said 16 that it, quote, does not condone the sexuality 17 and/or gender policies of the religious schools 18 whose policies have been called into question in 19 this -- in this lawsuit. 20 Do you -- do you know what the 21 Department meant by that? 22 MS. SNYDER: Objection. That is</p>	<p>1 scope of the topics listed in the 30(b)(6) 2 notice. Similarly, it calls for speculation and 3 is an ambiguous question. 4 If you're able to answer in your 5 personal capacity, you can. 6 THE WITNESS: I'm not aware of anyone 7 in the Department who's expressed an opinion one 8 way or the other with regard to those policies. 9 BY MR. SCHAEERR 10 Q Okay. I -- I assume that you're 11 generally familiar with the Supreme Court's 12 decision in Obergefell versus Hodges, right, the 13 case dealing with same-sex marriage? 14 A Yes, I am generally familiar with that 15 case. 16 Q Let me read you a statement from 17 Justice Kennedy's majority opinion and -- and ask 18 you to tell me if the Department agrees or 19 disagrees with it. 20 He said, quote, Many who deem same-sex 21 marriage to be wrong reach that conclusion based 22 on decent and honorable religious or</p>
<p>Page 250</p> <p>1 outside the topics in the 30(b)(6) deposition 2 notice. It is also -- calls for speculation and 3 is ambiguous. 4 You can answer in your personal 5 capacity if you're able. 6 THE WITNESS: The only answer I 7 can give -- 8 MR. SOUTHWICK: This is Paul Southwick, 9 and I, for the plaintiffs' side, join in the 10 objection. 11 THE WITNESS: The only answer I have is 12 I take the words at face value. The Department 13 -- 14 MR. SCHAEERR: Okay. 15 THE WITNESS: -- does not condone those 16 policies. 17 BY MR. SCHAEERR 18 Q All right. Are you aware of any 19 employees at OCR or in the Department who have 20 expressed disapproval of or disagreement with 21 those policies? 22 MS. SNYDER: Objection. Outside the</p>	<p>1 philosophical premises. 2 MS. SNYDER: Objection. That is 3 outside the scope of the topics listed in the 4 30(b)(6) deposition. Additionally, it's 5 argumentative and speculative. 6 If you can answer the question in your 7 personal capacity, you may. 8 MR. SOUTHWICK: I join those 9 objections. 10 MR. SCHAEERR: Can you tell me 11 whether -- 12 THE WITNESS: Would you repeat -- 13 MR. SCHAEERR: -- the Department 14 agrees -- 15 THE WITNESS: Would you repeat the -- 16 does -- does the Department agree or disagree 17 with the statement from Justice -- 18 MR. SCHAEERR: With that -- 19 THE WITNESS: -- Kennedy? 20 MR. SCHAEERR: -- statement, yes. 21 MS. SNYDER: Again -- again, the same 22 objection. Speculation. Argumentative. And</p>

<p>1 it's outside the scope of the topics.</p> <p>2 You can answer that question in your</p> <p>3 personal capacity if you're able.</p> <p>4 THE WITNESS: I can't answer on behalf</p> <p>5 of the Department, that question on behalf of the</p> <p>6 Department.</p> <p>7 BY MR. SCHAERR</p> <p>8 Q Okay. Do you -- do you personally</p> <p>9 agree or disagree with that statement?</p> <p>10 MS. SNYDER: Same objection. Outside</p> <p>11 the scope of the 30(b)(6) topics, and it is</p> <p>12 ambiguous.</p> <p>13 You can answer in your personal</p> <p>14 capacity if you're able.</p> <p>15 THE WITNESS: I'm not able to answer</p> <p>16 that question in my personal capacity, no.</p> <p>17 MR. SCHAERR: Okay.</p> <p>18 THE WITNESS: Would you read the -- I'm</p> <p>19 sorry. Read the statement again.</p> <p>20 MR. SCHAERR: Yes. He said, "Many who</p> <p>21 deem same-sex marriage to be wrong reach that</p> <p>22 conclusion based on decent and honorable</p>	<p>1 argumentative.</p> <p>2 If you -- if you can answer the</p> <p>3 question in your personal capacity, you may.</p> <p>4 THE WITNESS: I can't answer the</p> <p>5 question in my personal capacity.</p> <p>6 BY MR. SCHAERR</p> <p>7 Q You say you cannot answer it in your</p> <p>8 personal capacity?</p> <p>9 A No.</p> <p>10 Q Okay.</p> <p>11 A And certainly can't on behalf of the</p> <p>12 Department.</p> <p>13 Q All right. On -- on September 28th,</p> <p>14 Mr. Southwick tweeted an explanation of the</p> <p>15 policy view that underlies this lawsuit. Let me</p> <p>16 read that statement and let you tell me whether</p> <p>17 the Department agrees or disagrees with his view.</p> <p>18 He said, "Taxpayer funding, whether</p> <p>19 state or federal money, should not be used to</p> <p>20 support schools that discriminate against or</p> <p>21 exclude LGBTQ students - end of story."</p> <p>22 Can you tell me whether the Department</p>
<p>Page 254</p> <p>1 religious or philosophical premises."</p> <p>2 MS. SNYDER: Again, same objection.</p> <p>3 Outside the scope. It calls for speculation and</p> <p>4 it's argumentative.</p> <p>5 If you can answer that in your personal</p> <p>6 capacity, if you're able.</p> <p>7 THE WITNESS: No, I can't.</p> <p>8 BY MR. SCHAERR</p> <p>9 Q Okay. Here's another statement from</p> <p>10 Justice Kennedy's opinion -- and this is the last</p> <p>11 one I'll read -- discussing the implications of</p> <p>12 his opinion for religious groups. And, again,</p> <p>13 I'll read it and -- and ask you if the Department</p> <p>14 agrees or disagrees with it.</p> <p>15 He said, "It must be emphasized that</p> <p>16 religions and those who adhere to religious</p> <p>17 doctrines may continue to advocate with utmost</p> <p>18 sincere conviction that, by divine precepts,</p> <p>19 same-sex marriage should not be condoned."</p> <p>20 MS. SNYDER: Objection. It's outside</p> <p>21 the topics listed in the 30(b)(6) notice. It</p> <p>22 also potentially calls for speculation and is</p>	<p>1 or OCR agrees or disagrees with that statement of</p> <p>2 policy?</p> <p>3 MS. SNYDER: Objection. Outside the</p> <p>4 topics -- outside the scope of the topics in the</p> <p>5 30(b)(6) deposition. Also potentially calls for</p> <p>6 speculation. It's ambiguous and argumentative.</p> <p>7 You can answer that question in your</p> <p>8 personal capacity if you're able.</p> <p>9 THE WITNESS: I cannot tell you whether</p> <p>10 the Department agrees or disagrees with that</p> <p>11 statement you just read.</p> <p>12 BY MR. SCHAERR</p> <p>13 Q Okay. And in your personal capacity,</p> <p>14 can you tell me whether you agree or disagree</p> <p>15 with it?</p> <p>16 A I --</p> <p>17 MS. SNYDER: Objection. That's outside</p> <p>18 the topics in the 30(b)(6) deposition notice.</p> <p>19 Similarly, argumentative. Ambiguous.</p> <p>20 If you can answer in your personal</p> <p>21 capacity, you may.</p> <p>22 THE WITNESS: I cannot do so.</p>

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1 MR. SCHAERR: Okay. Well, thank you.  
2 That's all the questions I have.  
3 VIDEO TECHNICIAN: Are there any  
4 further questions or anything further for the  
5 record?  
6 MR. LIPPELMANN: This is Mark  
7 Lippelmann. I'm counsel for the religious school  
8 intervenors, Corban University, William Jessup  
9 University and Phoenix Seminary.  
10 Mr. Wills, thank you for your time  
11 today. I have no further questions beyond what  
12 Mr. Schaerr just asked.  
13 MS. SNYDER: So is that it for the  
14 intervenors?  
15 MR. SCHAERR: Yes.  
16 MR. LIPPELMANN: Yes.  
17 MS. SNYDER: Okay. I believe I have  
18 some follow-up questions, but I'd like to take a  
19 break to go over my notes and consult with my  
20 counsel, co-counsel. So I'd like to take maybe  
21 like a 20-minute or so break, if that's okay, and  
22 go off the record.

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1 with plaintiffs' counsel. Is it fair to say  
2 that -- that all of the complaints reflected on  
3 that chart were made outside the 180-day  
4 timeliness window?  
5 MS. SNYDER: Objection. I believe that  
6 misstates the chart.  
7 MR. SOUTHWICK: Join the objection.  
8 BY MR. SCHAERR  
9 Q Well, there's a -- there's a column  
10 there that says 180-day waiver requested.  
11 Do you see that, Mr. Wills?  
12 A Yes, I do see that.  
13 Q And the only -- the only reason to  
14 indicate that a -- that a waiver might be needed  
15 is if the -- is if the complaint was outside the  
16 180-day window; isn't that correct?  
17 MS. SNYDER: Objection. That calls for  
18 speculation. It's also outside the scope of the  
19 30(b)(6) notice.  
20 You can answer in your personal  
21 capacity if you're able.  
22 MR. SOUTHWICK: Objection. Lacks  
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1 MR. SOUTHWICK: That's fine with  
2 plaintiffs.  
3 VIDEO TECHNICIAN: Thank you. We are  
4 going off the record at 5:07.  
5 (Recess 5:07 p.m. to 5:37 p.m.)  
6 VIDEO TECHNICIAN: We are back on the  
7 record. The time is 5:37. Please proceed.  
8 MS. SNYDER: Thank you. I will say at  
9 the start, we are down to one mike. We had some  
10 battery issues, so if you have trouble hearing  
11 either me or the witness, please -- please let us  
12 know.  
13 MR. SOUTHWICK: Gene, you're on mute.  
14 MR. SCHAERR: I'm sorry. As I  
15 mentioned in the chat a minute ago, I have two  
16 quick follow-up questions about Exhibit 2. Can I  
17 go ahead and ask those first before you get  
18 started?  
19 MS. SNYDER: Sure.  
20 BY MR. SCHAERR  
21 Q Mr. Wills, if you could look again at  
22 Exhibit 2, which I know you discussed extensively

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1 foundation.  
2 THE WITNESS: In my personal capacity,  
3 that may indicate that the filing was outside of  
4 the 180-day window. I have not reviewed the  
5 complaints, and there's often additional  
6 information we need to determine whether  
7 something is actually outside the 180-day window.  
8 It may -- it may be that these cases  
9 are. It may be that some of these cases are not,  
10 but I can't say definitively that this means they  
11 were all filed outside the 180-day window.  
12 I have not examined the complaints  
13 myself, and I've not examined any attachments  
14 that those complaints might have submitted or  
15 interviewed anybody about these complaints. So I  
16 cannot make that definitive statement. It's a  
17 possibility, but that's as far as I could --  
18 could state for you.  
19 BY MR. SCHAERR  
20 Q Okay. So assuming a complaint is filed  
21 outside the 180-day window, before that complaint  
22 could proceed, OCR would have to make a

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<p>1 determination as to the requested exemption from 2 that 180-day requirement, correct? 3 A That is correct. 4 MR. SCHAERR: Thank you. That's all 5 I've got. 6 EXAMINATION BY COUNSEL FOR DEFENDANTS 7 BY MS. SNYDER 8 Q Do you recall earlier in the day being 9 asked some questions about the Northwest Yearly 10 Meeting correspondence? 11 A I do. 12 Q Okay. So I believe Exhibit 5 is that 13 correspondence. Could you confirm that for me? 14 A That is correct. Exhibit 5 is 15 correspondence with -- with regard to George Fox 16 University and Northwest Yearly Meeting. 17 Q Other than the -- the example in 18 Exhibit 5, are you aware of any other instance in 19 which the complainant or their counsel challenged 20 the criteria for the religious exemption in 21 conjunction with OCR's enforcement consideration 22 of a complaint?</p>	<p>1 also at Bates ED2.000241? 2 A Yes. I do recall being asked questions 3 about this listing of recipient institutions. 4 Q Okay. Do you recall Mr. Southwick 5 asked you some questions about the process that 6 OCR enforcement would -- would do in considering 7 complaints in conjunction with -- specifically, 8 the example, I believe, was Baylor University. 9 Do you recall being asked questions 10 about the process OCR may consider in evaluating 11 the complaints against Baylor University? 12 A Yes, I recall those questions. 13 Q And I believe you said that if the 14 investigator is aware of the existence of the 15 assurance letter on file for Baylor that it's 16 possible that the complaint could be dismissed in 17 the evaluation stage; is that correct? 18 A That is correct, dependent upon the 19 nature and extent of the exemption that was 20 assured. 21 Q Could you explain what you mean by that 22 last clause?</p>
<p>Page 262</p> <p>1 A I am not aware of any other example of 2 that, where there's -- 3 Q Okay. 4 A -- been a challenge to a religious 5 exemption under those -- on those grounds. 6 VIDEO TECHNICIAN: Sorry. I couldn't 7 hear you. Could you repeat that? 8 THE WITNESS: Could you repeat the 9 question, and I'll repeat the answer? 10 MS. SNYDER: Sure. 11 BY MS. SNYDER 12 Q Other than the example in Exhibit 5, 13 are you aware of any other instance in which a 14 complainant or their counsel challenged the 15 criteria for the religious exemption in 16 conjunction with OCR enforcement's consideration 17 of a complaint? 18 A I am not aware of any such instance. 19 Q If you could, please, go to Exhibit 12. 20 A Yes. 21 Q That is the school list. Do you recall 22 being asked questions about Exhibit 12, which is</p>	<p>Page 264</p> <p>1 A Yes. The investigator would need to 2 have a description of the exemption, the 3 particular section of that particular regulation 4 that was -- for which the recipient institution 5 was exempted, and would have to determine whether 6 the allegations in the complaint were covered 7 by -- in other words, were covered by that 8 particular exemption. If they were, that would 9 mean we would no longer have subject matter 10 jurisdiction. 11 Q What if the investigator conducted that 12 review and believed or determined that the -- 13 that the assurance letter did not match the 14 allegations in the complaint? 15 A Under those circumstances, if the 16 investigator determined that the assurance -- the 17 exemption did not match -- did not cover the 18 allegations in the complaint, the complaint would 19 be open for investigation by issuance of the 20 letter of notification of which we have a sample 21 here that would include the language about 22 exceptions and exemptions.</p>

1 Q And is that the investigator's sole  
2 decision?

3 A By no means.

4 Q Okay. So who is the decision-maker in  
5 that circumstance?

6 A Under those circumstances, as I -- as I  
7 testified considerably earlier today, all of  
8 those cases, all actions taken with regard to  
9 these cases must be forwarded -- a proposed  
10 action must be forwarded to headquarters for  
11 review.

12 The headquarters group, composed of,  
13 among others, the assistant secretary for  
14 enforcement, myself and senior counsel, would  
15 review the recommendation, and it would be the  
16 assistant secretary's decision as to whether that  
17 dismissal or any other action, formal action,  
18 should be taken with regard to that complaint.

19 Q Similarly, if the investigator believed  
20 that the -- the exemption in the assurance letter  
21 matched the allegations in the complaint such  
22 that OCR did not have subject matter

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1 reviewed at this point by the headquarters group,  
2 and the decision will be made ultimately by the  
3 assistant secretary.

4 Q Earlier in the deposition, you  
5 mentioned a regulation. I know you have that  
6 regulation in your binder. Could you flip to it?  
7 And we've produced it to everybody.

8 If you could go to the regulation which  
9 is 34 C.F.R. section 106.12.

10 A Uh-huh.

11 Q And if you could read aloud the  
12 introduction to paragraph c.

13 A Paragraph c, Eligibility. Any of the  
14 following in paragraphs (c)(1) through (6) of  
15 this section shall be sufficient to establish  
16 that an educational institution is controlled by  
17 a religious organization, as contemplated under  
18 paragraph (a) of this section, and is therefore  
19 eligible to assert a religious exemption to the  
20 extent application of this part would not be  
21 consistent with its religious tenets, colon.  
22 One, that the educational institution --

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1 jurisdiction, is it the investigator's sole  
2 decision that makes that determination?

3 A It is not. Similar to what I just  
4 described, the investigator would compose a  
5 letter of notification issue opening the  
6 complaint with all the language that we've  
7 described before. That proposal would be  
8 reviewed by the headquarters group, and the  
9 decision would ultimately be made by the  
10 assistant secretary.

11 Q Okay. I think I asked a confusing  
12 question. What if the investigator believes that  
13 the assurance of -- of religious exemption letter  
14 applies to the allegations in the complaint such  
15 that OCR would not have jurisdiction?

16 A Oh, I'm sorry.

17 Q Who is making the decision in that  
18 circumstance?

19 A Ultimately, the assistant secretary.  
20 All that -- any action taken with regard to those  
21 complaints, whether it's opening those complaints  
22 or dismissing those complaints, has to be

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1 Q That's okay. Perfect.

2 A All right.

3 Q If you could, please, also in your  
4 binder, go to -- it is in your binder. It is a  
5 Federal Register site, 85 Federal Register 59916,  
6 issued September 23rd, 2020. If you could please  
7 go to what is Bates labeled ED2.000213, which is  
8 actually page 59955 of the notice.

9 A I've reached that page.

10 Q And if you could just please read to  
11 yourself the paragraph in the third column that  
12 begins, "The Department understands."

13 Do you see that?

14 A I see it.

15 Q Through page ED2.000215, which is page  
16 59957 of the Federal Register site, the first --  
17 the -- midway through the first column, which  
18 ends "assert a religious exemption."

19 Do you see that?

20 A First column in 59957?

21 Q Yes, sir. About halfway through.

22 So -- so, again, just read to yourself, please,

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1 on page 59955 of the register or ED2.000213, the  
2 portion that begins "The Department understands"  
3 in the third column, and stop on page ED2.000215,  
4 which is page 59957, the part that ends "to be  
5 eligible to assert a religious exemption."

6 Could you read that part to yourself,  
7 please.

8 A Okay. I've completed my reading.

9 Q Okay. If you could, then, go back to  
10 the regulation that we were looking at, 34 C.F.R.  
11 106.12.

12 A Okay.

13 Q You've previously read the introductory  
14 paragraph c from the regulation. Do you see  
15 there that then there is a list of six  
16 paragraphs?

17 A I see them, the six paragraphs.

18 Q Okay. Do you know what the source of  
19 those six enumerated paragraphs are?

20 A Yes.

21 Q Could you tell me, please?

22 A The source of paragraphs 1, 2 and 3 are

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1 read, and I will share that. The numbering of  
2 the section is different here.

3 Section 106.12(c)(6), which actually is  
4 now in the regulation 106(c)(5), That the  
5 educational institution has a published  
6 institutional mission that is approved by a  
7 governing body of an educational institution and  
8 that includes, refers to, or is predicated upon  
9 religious tenets, beliefs, or teachings.

10 The Department's analysis of that is  
11 section 106.12(c)(6), as proposed, is consistent  
12 with longstanding OCR practice in recognizing  
13 this principle. For example, OCR has long  
14 recognized that a school or department of  
15 divinity is an educational institution controlled  
16 by a religious organization without any  
17 requirement that the school or department of  
18 divinity be controlled by a religious  
19 organization that is organized as a separate  
20 legal entity from the educational institution  
21 itself.

22 While the Department understands the

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1 the -- first articulated in the March 1977  
2 notice, the Federal Register.

3 Paragraph 4, I believe I referred to  
4 the -- the Acting Assistant Secretary Smith's  
5 guidance, where that -- this -- it's 1989  
6 guidance for OCR, which I will (inaudible).

7 Yes, paragraph 4 is -- is articulated  
8 in the memorandum from Acting Assistant Secretary  
9 Smith issued on October 11th, 1989. I'm looking  
10 at page ED2.000077, subsection or paragraph 1  
11 listed on -- on that page, which recites that a  
12 doctrinal statement with a notation that specific  
13 members of the institution community must espouse  
14 a personal belief in a religion or doctrinal  
15 statement, dash, this is sufficient evidence that  
16 the institution is, quote, controlled, end quote,  
17 by a religious organization under section  
18 106.12(a) for purposes of claiming these  
19 exemptions.

20 Q Okay.

21 A Section -- paragraph 5 in the  
22 regulation is -- is discussed in what I just

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1 assertions raised by some commenters --  
2 commenters that an educational institution must  
3 be controlled by a separate legal entity in the  
4 form of an external religious organization in  
5 order to qualify for religious exemption, those  
6 assertions are atextual, and the Department's  
7 final regulations recognizes -- should be  
8 recognize -- that some educational institutions  
9 are organized and governed by a local board or  
10 body of religious leaders rather than being  
11 operated under a hierarchical organization. The  
12 Title IX statute does not require that an  
13 educational institution and a controlling  
14 religious organization be separate and distinct  
15 entities. Further, the Department has long  
16 recognized that these entities can be one and the  
17 same, such as in a case of schools of divinity.

18 Additionally, the Department  
19 acknowledges that the statutory text leads to  
20 potential ambiguities as to which educational  
21 institutions are eligible for exemptions, and  
22 over the years, the Department has had to develop

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<p>1 a system for evaluating what is sufficient to 2 establish that an educational institution is, 3 quote, controlled by a religious organization, 4 end quote.</p> <p>5 The Department has previously shared 6 the parameters of this system with the public 7 through, one, issuing nonbinding agency 8 memoranda; and, two, publicly posting the 9 Department's responses to letters seeking a 10 religious exemption from Title IX. These 11 procedures left educational institutions in the 12 difficult position of digging through agency 13 memoranda from the 1980s and reading dozens of 14 letters from OCR in order to assess their 15 eligibility for asserting a religious exemption 16 under Title IX.</p> <p>17 Notably, however, many of these 18 documents, including the document that referenced 19 divinity schools being eligible for religious 20 exemptions, were issued before the events 21 described by one of the commenters above 22 occurred, such as the passage of a statute</p>	<p>1 sufficient to establish eligibility under the 2 control test. Yet under this rationale, even a 3 school of divinity would need to be controlled by 4 an outside organization that is also a religious 5 organization, contrary to over 30 years of OCR 6 practice. Why Congress would desire such an 7 outcome even as a policy matter, to say nothing 8 of the constitutional questions that might arise 9 by privileging some religious structures over 10 others, is left unaddressed by the commenter.</p> <p>11 The Department --</p> <p>12 Q So let me stop you. Is --</p> <p>13 A Okay.</p> <p>14 Q Is it -- is it correct to say that the 15 source of the exemptions -- or excuse me -- that 16 the source of the -- of paragraphs 1 through 6 is 17 listed in -- is -- is as you described as -- as 18 well as listed more specifically in the Federal 19 Register?</p> <p>20 A Yes, that is accurate.</p> <p>21 Q And in particular the citation that we 22 were referring to from September 23rd, 2020?</p>
<p>Page 274</p> <p>1 addressing Hurricane Katrina recovery or 2 President Reagan's veto of the Civil Rights 3 Restoration Act. The Department thus disagrees 4 with this commenter who suggests that the OCR 5 lacks regulatory authority for section 106.12 -- 6 .12 because Congress in other statutes suggested 7 a distinction between maintaining religious 8 tenets and being controlled by another legal 9 entity that maintains legal tenets. That a 10 different Congress drafted legislation in a 11 different way does not alter the fact that the 12 Title IX statute, as written, does not contain an 13 independent requirement that the controlling 14 religious organization be a separate legal entity 15 than the educational institution.</p> <p>16 Indeed, the difference between these 17 two categories of educational institutions 18 appears to be a legal formality, in the sense 19 that this comment could imply that forming a new 20 legal entity on paper and merely having that 21 entity, quote, control, end quote, the 22 educational institution would in fact be</p>	<p>1 A That's correct.</p> <p>2 MS. SNYDER: Thank you. Nothing 3 further.</p> <p>4 MR. SOUTHWICK: Nothing further from 5 plaintiffs.</p> <p>6 VIDEO TECHNICIAN: Okay. Thank you, 7 everyone. One moment, please, and I'll take us 8 off the record.</p> <p>9 This concludes today's testimony given 10 by Randolph Wills. The total number of Media 11 Units used was 5. All media will be retained by 12 Veritext. And we're going off the record at 13 6:04. Thank you.</p> <p>14 (Whereupon, at 6:04 p.m., the 15 deposition of RANDOLPH WILLS 16 was adjourned.)</p> <p>17</p> <p>18 * * * *</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

1 CERTIFICATE OF NOTARY PUBLIC  
2 I, ERICK M. THACKER, the officer before whom  
3 the foregoing deposition was taken, do hereby  
4 certify that the witness whose testimony appears  
5 in the foregoing deposition was duly sworn by me;  
6 that the testimony of said witness was taken by  
7 me in stenotype and thereafter reduced to  
8 typewriting under my direction; that said  
9 deposition is a true record of the testimony  
10 given by said witness; that I am neither counsel  
11 for, related to, nor employed by any of the  
12 parties to the action in which this deposition  
13 was taken; and, further, that I am not a relative  
14 or employee of any counsel or attorney employed  
15 by the parties hereto, nor financially or  
16 otherwise intere  
17 action.  
18   
ERICK M. THACKER

Notary Public in and for the  
Commonwealth of Virginia  
20

My commission expires:  
21 August 31, 2024  
22 Notary Registration No.: 7184488

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1 Randolph Wills  
c/o Hilarie E Snyder, Esquire  
2 U S Department of Justice  
P O Box 883  
3 Washington, D C 20044  
4  
IN RE: Elizabeth Hunter, et al vs U S  
5 Department of Education, et al  
6 Dear Mr Wills:  
7 The enclosed transcript of your deposition in  
the above-captioned case is submitted to you on  
8 Tuesday, October 26, 2021, for your signature  
and any changes in form or substance you wish to  
9 make. All changes will become part of your sworn  
testimony

10  
11 After you have read the transcript, please  
sign the Acknowledgment of Deponent. In addition,  
12 an Errata Sheet is attached for you to list any  
change and the reason why such change is being  
made

13  
14 Please return the original signed  
15 Acknowledgment of Deponent and the Errata Sheet  
16 to Veritext Legal Solutions, 1250 Eye Street,  
17 Northwest, Suite 350, Washington, D C  
20005, no later than 30 days after the date stated  
18 above. You can also fax a copy prior to sending  
the originals to (202)857-8577

19  
20 If you fail to return the above-referenced  
21 pages within the time allowed, the transcript may  
be used as if signed by you

22 Yours,  
Erick M. Thacker, RPR  
Reporter/Notary  
cc: Paul Carlos Southwick, Esq

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1 ACKNOWLEDGMENT OF DEPONENT  
2 I, RANDOLPH WILLS, do hereby acknowledge I  
3 have read and examined the foregoing pages of  
4 testimony, and the same is a true, correct and  
5 complete transcription of the testimony given by  
6 me, and any changes or corrections, if any, appear  
7 in the attached errata sheet signed by me.

8

9

10

11

12

13 Date RANDOLPH WILLS

14

15

16

17

18

19

20

21

22

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1 Elizabeth Hunter, et al vs U S Department of  
Education, et al

2 Randolph Wills (#4843618)

3 ERRATA SHEET

4 PAGE \_\_\_\_ LINE \_\_\_\_ CHANGE \_\_\_\_\_  
5

6 REASON \_\_\_\_\_

7 PAGE \_\_\_\_ LINE \_\_\_\_ CHANGE \_\_\_\_\_  
8

9 REASON \_\_\_\_\_

10 PAGE \_\_\_\_ LINE \_\_\_\_ CHANGE \_\_\_\_\_  
11

12 REASON \_\_\_\_\_

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14

15 REASON \_\_\_\_\_

16 PAGE \_\_\_\_ LINE \_\_\_\_ CHANGE \_\_\_\_\_  
17

18 REASON \_\_\_\_\_

19

20

21

22 RANDOLPH WILLS Date \_\_\_\_\_

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71 (Pages 278 - 281)